01124

(19,155.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 504.

ALBERT J. ADAMS, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

INDEX.

	Original.	Print.
Case and exceptions on appeal to the court of appeals	a	1
Statement required under rule 41	1	1
Notice of appeal to the appellate division	2	2
Indictment	3	2
Defendant's plea of not guilty	5	3
Order of removal	6	4
Extract of minutes and judgment	7	5
Evidence for the prosecution	9	6
Testimony of Dayton F. Searle	9	6
George P. Hammond, Jr	19	12
Henry R. Steele	49	31
Francis M. Leake	59	38
Charles Hendrickson	60	39
Charles Flannigan	61	39
Samuel Shortridge, Jr	61	39
Robert S. McClellan	69	45
Samuel A. Teets	75	48
William F. Baeck	76	49
Acton C. Bassett	76	49
Ernest G. L. Wellenkamp	77	50
George F. Balmer	78	50

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 23, 1903.

	Original.	Print
Testimony of Harry P. Whittaker	84	54
Edward J. Reardon	85	55
Keyrain J. O'Connor	96	62
Frank A. Lord	97	63
Frederick N. Goddard	103	67
Isidor Wels	104	67
Charles Smith	104	67
Frederick Silverstone	107	69
David N. Carvalho	107	69
George P. Hammond, Jr. (recalled)	114	74
Evidence for defendant	115	74
Testimony of Everett M. Seixas	115	74
Ernest Collyer	121	78
Harry Furst	123	80
John T. Cuff	126	81
Charge of court, &c	128	82
People's Exhibit 53, March 1900—List of figures	143	93
54—Letter of Albert J. Adams to A. F. Silverstone, September 12, 1900	147	94
55—Letter of Albert J. Adams to Geo. M. Birdsall, March 23, 1901	147	95
Extracts from Exhibits 23, 24, 25, 26, 27, and 28	148	95
Stipulation as to exhibits	148	95
Photolithographs of manifold sheets	1635	107
Stipulation as to record	166	108
Judge's certificate to bill of exceptions	166	108
County clerk's certificate	167	108
Order of appellate division affirming judgment	168	109
Judgment of affirmance	169	109
Notice of appeal to court of appeals	171	110
Clerk's certificate	172	111
Remittitur from court of appeals	173	111
Opinion of court of appeals	175	112
Order on remittitur	191	119
Assignment of errors	195	121
Petition for writ of error	198	122
Order of Mr. Justice Peckham allowing writ of error	203	124
Bond on writ of error	205	124
Writ of error	208	126
Citation and service	211	127
Return to writ of error and clerk's certificate	213	128

a In the Court of Appeals of the State of New York.

On appeal from the appellate division of the supreme court, first department.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
against
ALBERT J. ADAMS, Defendant-Appellant.

Case and Exceptions on Appeal.

Kellogg & Rose, attorneys for defendant-appellant, 120 Broadway, New York city.

William Travers Jerome, attorney for respondent, district attorney for the county of New York, Criminal Courts building, New York city.

1 New York Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
against
ALBERT J. ADAMS, Defendant-Appellant.

Statement Required under Rule 41.

The defendant was indicted under section 344a of the Penal Code on two counts:

1st. For the crime of knowingly having in his possession a writing, paper and document representing and being a record of a chance, share and interest in numbers sold in what is commonly called policy.

2d. For the crime of knowingly having in his possession a paper, writing, print, numbers, device, policy slip and articles of a kind such as is commonly used in carrying on, promoting and playing the game commonly called policy.

Which indictment was filed in the office of the clerk of the court of general sessions, in and for the city and county of New York, on the 16th day of January, 1902.

Thereafter, and on the 4th day of June an order was entered removing said indictment to the supreme court of the State of New York, in and for the city and county of New York.

The trial was had in the New York supreme court, trial term, part I, criminal branch, before the Hon. Francis M. Scott, justice, and a jury, on the 14th day of April, 1903.

The People were represented by George W. Shurman and Frank

2 Lord, Esq., assistant district attorneys; and the defendant was represented by James W. Ridgway, Esq. There has been no change of parties since the trial of this action, except that Kellogg & Rose have been associated with James W. Ridgway, Esq., to take an appeal.

Notice of Appeal to the Appellate Division.

New York Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,
against
ALBERT J. ADAMS, Defendant.

SIR: Please take notice that the defendant hereby appeals from the judgment of conviction entered herein on the 21st day of April, 1903, and from the order denying the motion for a new trial, and from each and every part thereof, to the appellate division of the supreme court, for the first judicial department.

Dated April 21st, 1903.

JAMES W. RIDGWAY,
Attorney for the Defendant, 26 *Court Street, Brooklyn, N. Y.*

To Hon. William Travers Jerome, district attorney.
To the clerk of the supreme court of the city and county of New York.

3 *Indictment.*

Court of General Sessions of the Peace in and for the County of New York.

THE PEOPLE OF THE STATE OF NEW YORK
against
ALBERT J. ADAMS.

The grand jury of the county of New York, by this indictment, accuse Albert J. Adams of the crime of knowingly having in his possession a writing, paper and document representing and being a record of a chance, share and interest in numbers sold in what is commonly called policy, committed as follows:

The said Albert J. Adams, late of the twentieth ward of the borough of Manhattan, of the city of New York, in the county of New York aforesaid, on the twelfth day of December, in the year of our Lord one thousand nine hundred and one, at the ward, borough and county aforesaid, feloniously did knowingly have in his possession a certain writing, paper and document representing and being a record of a chance, share and interest in numbers sold in

what is commonly called policy, which said writing, paper and document is as follows, that is to say: manifold books and sheets, being records of numbers sold and lottery policies sold, commonly known as a manifold book, a more particular description whereof is to the grand jury aforesaid unknown, and cannot now be given; against the form of the statute in such cases made and provided and against the peace of the People of the State of New York and their dignity.

4 *Second Count.*

And the grand jury aforesaid, by this indictment, further accuse the said Albert J. Adams of the crime of knowingly having in his possession a paper, writing, print, numbers, device, policy slip and articles of a kind such as is commonly used in carrying on, promoting and playing the game commonly called policy, committed as follows:

The said Albert J. Adams, late of the ward, borough and county aforesaid, afterwards, to wit, on the day and in the year aforesaid, at the ward, borough and county aforesaid, feloniously did knowingly have in his possession a paper, print, writing, numbers, device, policy slip and articles of a kind such as is commonly used in carrying on, promoting and playing the game commonly called policy, which said paper, print, writing, numbers, device, policy slip and articles aforesaid is as follows: manifold books and sheets, being records of numbers sold and lottery policies sold, and commonly called manifold books, policy slips, and being numbers alleged to have been drawn, and policy lists, being alleged records of alleged drawings, a more particular description whereof is to the grand jury aforesaid unknown, and cannot now be given; and against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

WILLIAM TRAVERS JEROME,
District Attorney.

(Indorsed:) Witness, George J. Hammond.—Filed 16th day of January, 1902.—The People *vs.* Albert J. Adams.—Wm. Travers Jerome, district attorney.—A true bill.—Charles E. Merrill, foreman. Policy. (Section 344a Penal Code.)

5 *Defendant Pleads Not Guilty.*

At court of general sessions of the peace of the city and county of New York, holden in and for the county of New York, at the building for criminal courts, in the borough of Manhattan, of the said city, on Friday, 14th day of February, in the year of our Lord one thousand nine hundred and two.

Present: The Honorable Rufus B. Cowing, city judge of the city of New York, justice.

THE PEOPLE OF THE STATE OF NEW YORK
vs.
ALBERT J. ADAMS.

On indictment for the crime of knowingly having in his possession a certain writing, paper and document representing and being a record of a chance, share, and interest in numbers sold in what is commonly called policy, which said writing, paper, and document is a record of numbers sold and lottery policies sold, commonly known as a manifold book.

Filed January 16th, 1902.

The defendant is arraigned at the bar and pleads *not guilty*, and demands a trial on said indictment.

A true extract from the minutes.

EDWARD R. CARROLL,
Clerk of Court.

6

Order of Removal.

At a criminal term, part I, of the supreme court of the State of New York, held in and for the county of New York, at the Criminal Courts building in the borough of Manhattan, of the said city of New York, on the 4th day of June, 1902.

Present: Honorable Francis M. Scott, justice.

THE PEOPLE OF THE STATE OF NEW YORK
against
ALBERT J. ADAMS.

It appearing, in the opinion of this court, that it is proper that the indictment hereinafter named be tried herein;

Now, on motion of Wm. Travers Jerome, district attorney of the county of New York, it is

Ordered, that the indictment found in the court of general sessions of the peace of the city and county of New York on the 16th day of January, 1902, against the above named defendant, Albert J. Adams, for the crime of policy (sec. 344*a*, Penal Code), be and the same is hereby removed into the supreme court of the State of New York, in and for the county of New York.

FRANCIS M. SCOTT,
Justice of the Supreme Court.

7 *Extract of Minutes.*

At a trial term of the supreme court of the State of New York, holden in and for the county of New York, at the building for criminal courts in the borough of Manhattan of the said county, on Tuesday, the 14th day of April, in the year of our Lord one thousand nine hundred and three.

Present: The Honorable Francis M. Scott, justice of the supreme court of the State of New York, justice.

Albert J. Adams is in due form of law arraigned at the bar upon an indictment for the crime of knowingly having in his possession a certain writing, paper and document representing and being a record of a chance, share, and interest in numbers sold in what is commonly called policy, which said writing, paper and document is a record of numbers sold and lottery policies sold, commonly known as a manifold book.

Whereupon the following jury is balloted and sworn to well and truly try and a true verdict give, according to evidence, viz:

Ashton M. Boney,	John C. Hankinson,
Noah W. Taussig,	John Campbell,
John E. Ingersoll,	Joseph E. Kehoe,
Thomas Moore, Jr.,	Joseph M. Tobias,
Bradford K. Wiley,	Rudolph Sommer,
Edson H. Andrews,	Henry Duchness,

who, upon their oath aforesaid, do say that the said Albert J. Adams is guilty of the felony as by the indictment is alleged against him.

8 TUESDAY MORNING, *April 21st*, 1903.

Court meets, present as before.

The defendant is arraigned at the bar.

The district attorney moves for judgment against the defendant.

It is thereupon demanded of the said Albert J. Adams what he hath to say why judgment should not be pronounced against him according to law, who nothing further saith unless as before he hath said.

Whereupon it is ordered and adjudged by the court that the said Albert J. Adams, for the felony aforesaid, whereof he is convicted, be imprisoned in the State prison at hard labor for the term of which the minimum shall be not less than one year, and the maximum of which shall be not more than one year and nine months, and pay a fine of one thousand dollars.

And it is further ordered, that he stand committed until the same be paid, not exceeding one day for each dollar of the fine imposed, from and after the termination of the said term of imprisonment.

A true extract from the minutes.

THOMAS L. HAMILTON,
Clerk of Court.

9 DAYTON F. SEARLE, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct examination by Mr. SCHURMAN:

I am seventeen years old. I reside at 171 West 133d street. I live with my mother and brother. I work in the National Shoe and Leather bank on Broadway and Chambers street. I have worked there since November 28th. I worked for the firm of Pocher & Company, real estate people; when I first went to work for them they were at 595 Lexington avenue; I worked for them there about two months, and after that the office moved down to 40 West 34th street. I moved down there with them; I stayed there after that about four months. I remember the date when Pocher & Company moved from Lexington avenue to 40 West 34th street about the first week of November, 1901. I am familiar with the office plans of 40 West 34th street, as to the arrangement of the office. The plan which I see, in my opinion, apart altogether from the dimensions, shows the outlines of the offices of Pocher & Company, and of Mr. Adams, and is properly made so as to show the partitions between the offices. I looked at that upstairs with you; I think it is correct. I do not know anything about the size of any of those offices; I could not tell you the size of any of them. I know about the partitions in general.

Mr. SCHURMAN: I offer this in evidence, not the dimensions upon it as indicated, for I do not know as to their accuracy, but merely for the purpose of showing the general arrangement of the office of Pocher & Company.

Mr. RIDGWAY: It was made by a city surveyor.

Admitted and marked People's Exhibit A. Same shown to the jury.

10 This is 34th street here—this end next the exhibit mark. This is where you enter the office of Pocher & Company. They are on the south side of West 34th street. As you enter from the street, in order to enter the suite of Pocher & Company, you turn to the left, and you pass through here. The first thing to your left as you enter is this slanting partition with the desk of the cashier of Pocher & Company. Back of here is a wooden partition with a wire above it, and then over there, back, it had a piece of railing about three feet high. And that railing runs right back to the first partition. I mean this place here, right next to the clock. Inside of the rail here are clerk's desks. If you want to enter the office, back, you turn to your right when you get near that (indicating). I mean turning this way. There is a door leading into that room called the storeroom. That room called storeroom was used to store signs and supplies and brooms and such things. The name Mr. Adams was on the door leading to that storeroom. That partition bounding the storeroom and inaproom, separating it from the

main office, did not run clear to the ceiling. It only went about a foot or a foot and a half from the ceiling. That partition consisted of wood and glass. The storeroom and maproom were separated from one another by partition of the same kind. I guess it began about the same height. There wasn't any door between the two. Facing you as you entered the storeroom was another door leading to Mr. Adams's office. On that door was the name, "Mr. Adams." The furniture that was there on the 12th of December, 1901, the day when the officers came there, consisted of chairs and desk. The desk was located just where it is there (indicating), up against the partition there; a few feet from the back of the office. That is the partition which separates the offices or rooms from Mr. Pocher's office it ran to the ceiling.
11 There was a door between the two offices. There was a space between where the desk was located in Adams's office and the windows in the rear of four or five feet, and there was a vault glass light over the ceiling above that space. There were two windows into the courtyard in the rear from Adams's office. That was the last office to the right. There weren't any windows in the storeroom here (indicating). There was a trunk in the office like the one now shown me. I made a mark on that trunk some time ago, here in the district attorney's office the first time I came down. I was there at the time the officers took that trunk.

Mr. SCHURMAN: I ask to have it noted on the record that the trunk that is referred to is marked People's Exhibit 2 for identification.

I had seen a trunk like that, People's Exhibit 2 for identification, in Mr. Adams's office some time before December 12th, when the officers came there; I guess a couple of weeks before. When I say I saw it in the office of Mr. Adams, I mean the office with the desk in it, and with the windows in it, and designated on this plan, People's Exhibit A, as Mr. Adams's private office. I had seen that trunk located back of the desk, between that and the windows. I am indicating the vault space there next to Mr. Pocher's office, between the desk and the window. I never saw Mr. Adams do anything to the trunk. I don't know whether the trunk was locked or not. I do not know. My business there was that of office boy. As office boy I copied letters—I called telephone numbers up for Mr. Adams there. I think once I went to a drug store for him. Mr. Adams had been occupying that office, noted on the plan as his private office, about a month prior to the time that the officers came there in December, 1901; I guess it must have been about a
12 month and a week; something like that; five or six weeks. Whether he came there as soon as the partitions were put up, I am not sure; I don't remember; I think the desk was there when I was there. I don't know whether that was a new desk or not. I saw Mr. Adams, this defendant, occupying that desk while I was there. I never saw anybody else using that desk. I saw Mr. Adams

sitting at the desk. There was a chair in the room, a desk chair. I don't remember whether it was revolving; there was a chair. I saw Mr. Pocher and others talking to Mr. Adams while he was in that office. On such occasions Mr. Adams sat at his desk. The others sat on some of the other chairs, or stood beside him. I never saw Mr. Pocher use that desk, or anybody use it, except Mr. Adams. I remember seeing Mr. Adams unlocking that desk in the morning, sometimes when he came there. It was a roll-top desk. After he unlocked it I do not remember seeing him do anything with the roll part of the desk. I don't remember whether he opened it or not. I don't remember now seeing him writing at that desk at any time—I may have. I saw him reading while sitting there. When Mr. Adams left the office I saw him close the desk. I delivered mail to Mr. Adams there—letters addressed to him; handed them to him personally, sometimes. They came in the mail in the regular way. When Mr. Adams was not there I delivered letters to him through a slit in the side of the desk. I poked them through the slit so they dropped on the inside. I have seen People's Exhibit 5 for identification before. I saw that on Mr. Adams's desk, in his office—that is, in the desk in the office I have been testifying about. There are certain initials on that—A. J. A. I know who placed them upon it; I did. I don't remember when I did that. I did it before the officers came there, while I was at 40 West 34th street. I think I copied one or two letters in that book for Mr. Adams. I saw Mr. Adams dictate letters to a stenographer there. Her name was Miss Butler. She was in the employ of Pocher & Company.

13 By the COURT:

The letters which I copied into that book I got from Miss Butler.

By Mr. SCHURMAN:

After I had copied them I don't remember whether I gave them to Miss Butler or not. When I went to get the letter-book to copy them in, I think Miss Butler brought it out for me. I don't remember going in and taking the letter-book off of the desk on one occasion. People called there frequently to see Mr. Adams.

Q. Do you know Dolph Jantzen?

A. I have seen him.

Mr. RIDGWAY: I object.

Q. Did you ever see him call there?

Mr. RIDGWAY: I object to it as totally immaterial.

The COURT: I will take it.

Exception.

A. Yes. He called there around about one o'clock and six o'clock, sometimes. I had directions from Mr. Adams or somebody as to what time Mr. Adams would see people there. The direction was from Mr. Pocher.

By the COURT:

Mr. Pocher told me when Mr. Adams would see people. I don't remember whether Mr. Adams was there or not when he told me.

By Mr. SCHURMAN:

Whether Mr. Adams himself ever told me to tell anybody when he could be seen there I do not remember. Mr. Adams was at his office in 40 West 34th street usually about that time, about
14 one and six, each day. I remember about the glass of the storeroom door being broken some time after the officers were there. About a week or so afterwards, I guess. When the new glass was placed in, Adams's name wasn't put upon the door then. Mr. Adams continued to use that office after that, the same office he had before, and I left the employ of Pocher & Company of my own accord. Charlie Smith and I left at the same time, after a talk together. I saw tin boxes like this (referring to People's Exhibit 3 and 4 for identification) on top of Mr. Adams's desk. The boxes which I saw there had initials upon them. They were "A. J. A., No. *L*." and "A. J. A., No. 2." I never saw Mr. Adams open these boxes or handle them. They were kept on top of his desk. I do not remember seeing the three boxes there. There may have been three. I do not remember. There may have been three, but I only remember two. 40 West 34th street is in the county of New York.

Cross-examination by Mr. RIDGWAY:

At recess time I was up in the district attorney's office, and I have been there a great many times. I should say I have been in the district attorney's office about fifteen or sixteen times. I get paid for coming here nothing except what is on the back of the subpœna. About fifty cents and car fare altogether. I don't get paid outside of that. I haven't been promised anything. I wasn't told that it would be made all right to me after the case was over. Nothing was ever said like that. Nothing was said about money whatever, neither to me or my parents.

There was nothing said to my parents about my being paid for my trouble that I know of. When I went up to the district attorney's office I looked at this. I told them it was a correct drawing. I didn't see the surveyor that you sent up to make this
15 plan. I worked in that office after the officers went there and raided it; about two months, I believe. I didn't, a few days afterwards, see a surveyor come up and take measurements and make this map. The glass was broken in the office door after that time the officers came there. I don't know how long it was afterwards. It might have been a week, and it might have been a month. Whether I am so far away from it as that, that I cannot tell; whether it was a week or a month I cannot tell you. I say

the name Mr. Adams was on the storeroom door. I am certain of that. It was before the glass was broken. I didn't know that the surveyor went up there immediately after this raid and made this diagram. I did not know it until I saw the diagram the first time. This is Mr. Adams's office (indicating); and this is the storeroom next to it. And I say that that door leading from Mr. Pocher's office into the storeroom had Mr. Adams's name on it, and the other door leading into the room, both doors, both doors had his name on. Pocher & Company employed me to work at that place. Pocher & Company's business was real estate and insurance. I went to work there in September, 1901, and the police came there in December, or these raiders, about the middle of December. There were other clerks in the place besides me; I should say about a dozen. They worked for Mr. Pocher. The name of "Pocher & Company" was on the windows on the front of the building; the place was in 34th street, between Fifth and Sixth avenues. There wasn't any other name besides Pocher & Company on this front window. As you entered the place there was a cashier's desk, at which place rents were paid and moneys paid into Pocher & Company; and then as you entered in there were the desks of the various clerks located as this map shows them to be. I have examined it carefully; there was a typewriter, managing department, renting department, insurance department, sales department, mortgage depart-
16 ment, just as they are entered there on that map, and that is true and correct, and each person occupying a desk in the places marked as you have indicated was working for Mr. Pocher. And the room that I say Mr. Adams had had a desk in it; it did not have a safe, not at that time. The room had chairs and desks, and that trunk and the wardrobe in it; that was the last room in the back of the place on the right hand side. There wasn't any clerk in that room at all. Nobody was doing any clerical work at all. I never saw anybody in that room doing any work of any character at all, except as I have described, Mr. Adams, and except the cleaning up. I mean the sweeping up. And with that exception I saw no other work ever done in that room. And all the other work that was in the place was done by the clerks and people working for Pocher & Company in the real estate business. In this room I sometimes saw Mr. Pocher talking with Mr. Adams. As he talked with Mr. Adams, Mr. Adams was occupying the same seat—the seat in front of the desk. They were engaged in conversation. I never saw any work being done. I saw other persons converse with Mr. Adams; a great many persons that I did not know. I don't remember hearing them talk about property. You could not hear in the outer office. I was not in the room at the time, and I did not hear what they conversed about, and I did not see what was doing. Sometimes the door was open and sometimes it was shut. That is substantially all that I saw, what I have told this jury, in the time that I worked there. I went to work there in September, but not in the new office. I was up in the Lexington Avenue office

in September. Mr. Adams was not there, so I will confine myself to this place in 34th street. I first worked there, in November, Pocher & Company hadn't opened the place before I went down there. I went down with them. Mr. Adams was not there at that time.

17 Mr. Pocher carried on this real estate business about a week before Mr. Adams had the little office that I have described in the back part. Mr. Adams was there about five weeks before these men came down and raided his place. During that time I saw him nearly every day. When I say nearly every day—I mean once in a while he did not come. Sometimes he did not come. I say I copied a letter into the book once or twice, and that was at the request of Miss Butler. Miss Butler worked for Mr. Pocher. I did not mail some letters for Mr. Adams. I don't know what became of the letters. I went to the drug store for him once; that is all I remember; that was all I ever did for Mr. Adams. When I came there in the morning I gathered up the mail. I would generally get there before the mail came; and the letter carrier brought it in. This mail would be addressed to different people. Some was for Mr. Pocher, and some for the clerks and I sorted it over and distributed it; and that is all I did in that respect. I was there the day these men came to the place. Mr. Adams was not there when they came in. He came in afterwards. I am not the boy that said I saw one of these men take some bonds out of a desk there.

Q. You remember bonds being taken out by an officer there?

A. No.

Q. One of these chaps that went in there with a warrant?

A. No, sir; I do not. I didn't say something about that to some one. I was not in the room when they were there. They shut the door. The officers shut the door. I saw them come out of the office after they had shut the door.

Q. Did you see one of them have something in his hand that you afterwards said something about?

A. Well, they carried the trunk and the boxes.

Q. Yes, outside of that?

A. I don't remember anything else.

Q. You did not remember seeing that?

18 A. No. They were in this place, in this room, alone, these chaps that went there, about fifteen minutes, I guess. They closed the door. Some of them went in and out a good part of the time. And the men that went out, after having first been in there, I could not see where they went. They went out of the office. I don't know where they went. Some of them went out of the building and some of them just came back again.

Redirect examination by Mr. SCHURMAN:

I was there at the time the trunk and tin boxes and waste paper basket with papers in it were taken out. I did not hear the names

of the police officers who were there executing the warrant, and I did not make it my business as an office boy to go in and hear them reading the search warrant there. I was not prevented from going in the office. I did not try to go in. They carried the trunk and boxes out in an orderly way. I said I was down in 40 West 34th street about a week before Mr. Adams came there. Right after we got there, there was someone working and putting in a partition in the rear of the office. When I got there first the offices which were subsequently occupied by Mr. Adams and Mr. Pocher, was all in one room. And then there were wooden and glass partitions put up so as to make it in separate private offices. I don't remember whether it was after or before those partitions were up that Mr. Adams came and occupied his office to the right. I don't know which it was, but it was about that time. I have been down to the district attorney's office twice before I was subpœnaed for the trial of this case since the former trial. I was down once first, and then subpœnaed for the trial yesterday. I don't know whether it was postponed yesterday at Mr. Ridgway's request. I know that it did not go on. I had a subpœna to come down every time. After I had been down the first time I had a talk with Mr. Pocher
19 about what I said down there. Nobody ever offered or furnished me any money at all in this case. I am getting fifty cents, as it is described on the back of my subpœna. I am keeping my subpœnas. I never said anything to anybody about those men taking out any bonds. I don't know anything about it. I never heard of any civil suit about any bonds since that. Mr. Ridgway did not summon me as a witness at any time.

GEORGE P. HAMMOND, JR., called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

I am chief county detective, district attorney's office, New York county. I have been such since the first of January, 1902. Prior to that my occupation was assistant superintendent, Society for the Prevention of Crime. I remember going with Officer Rhinders of the police force of the city of New York on the 12th of December, 1901, to the premises 40 West 34th street. I know that Rhinders at the time was a member of the police force, and one of the detectives assigned to the district attorney. The district attorney at that time was Eugene A. Philbin. Mr. Philbin's secretary did not go along with us at the time we visited 40 West 34th street at first, but he did the second visit, the same day. He was there at the time the first warrant was executed. His name is Shortridge. I don't know what his first name is. On the occasion of our first visit there was Mr. Reardon, Mr. McClellan, Detective-sergeant Rhinders and myself, and I believe there was a reporter for one of the newspapers that followed us, but that I am not clear on; as

four, I know, were there. We entered the premises 40 West
20 34th street, which was at that time the office of Pocher & Company, real estate men. We passed through the main office of Pocher & Co. to the rear part of those premises, and I saw a glass door marked "Mr. Adams;" that was on the right-hand side. I entered that room, and there was an empty room with no one in it. On the left-hand side was another door, and I saw two gentlemen, one sitting at a desk, and one alongside of the desk, engaged in a conversation, I believe, until he came out and turned towards the front part of the premises. As we got a short distance from Mr. Pocher's private office we saw this defendant entering the door from 34th street. I called Detective Sergeant Rhinders's attention to it, and we both approached Mr. Adams, and Rhinders informed him that he had a warrant for his arrest. Mr. Adams then accompanied us to the room which had the name of Mr. Adams on the door, and we entered in that room.

People's Exhibit A shown witness.

We passed down here (indicating). I am pointing to the office marked on this plan, Mr. Adams's private office. The door between it and the storeroom is the one on which I noticed the name Mr. Adams. There are two windows in the rear.

Q. Do these windows look out in the back yard or area?

A. There was quite a stream of light. I was not looking out the windows. I paid no attention to what was outside. I remember the windows being there.

Q. What did you do in there with Mr. Adams at that time?

A. Well, we stopped alongside the desk in that room, and Rhinders took out the search warrant and started to read it.

By the COURT:

Q. At that time had all four of you gone into the room, besides Mr. Adams?

21 A. Whether Reardon and McClellan had come in I do not know, but Rhinders and I were alongside Adams. As Rhinders started to read the search warrant, Adams said: I warn you not to touch anything in this room; there is nothing here belongs to me;" and as Adams said that I stepped to the desk and picked up a letter book which I saw had "A. J. A." on it, and I said, "How about this, Adams? This has A. J. A. on it," and Adams said nothing.

People's Exhibit 5 for identification shown witness.

The first time I ever saw that book was on top of the desk in that room.

Q. Is that the one you have referred to as having spoken to Mr Adams about?

A. Yes.

Q. Yes?

A. I then suggested to Rhinders that we had better go slow, and not to go too fast, and that it would be a good idea for us to get some one——

Mr. RIDGWAY: I object.

By the COURT:

Q. Was it in Mr. Adams's presence?
A. Yes.

Mr. RIDGWAY: I object, for even if he said it, it does not make it material.

The COURT: It will do no harm.
Exception.

By Mr. SCHURMAN:

I spoke to Rhinders: "It would be a good idea to get some one to advise us as to the proper method to proceed, so there would be no mistake." To that end I suggested we go back to 396 West 22 31st street and see Mr. Moss, or some one there who was capable of advising us. And I further suggested that he had better designate McClellan and Reardon to stay in the place and allow no one to enter it or take anything from the room until we returned, and he fell in with that suggestion and designated McClellan and Reardon to stay there until we came back to the place. McClellan's and Reardon's full names are Robert S. McClellan and Edward J. Reardon. Rhinders and I, accompanied by Mr. Adams, entered the coach by which we had come to the place and drove to 396 West 31st street, which we entered and left Mr. Adams upstairs in 396 West 31st street, and Rhinders turned him over, I think, to Detective Sergeant Cuff. Detective Sergeant Cuff was a member of the police force. He had gone with a party to 396 West 31st street and remained there. And then, accompanied by Mr. Frank Moss and Captain Goddard and Mr. Shortridge, and several others, I cannot recall—Isidor Wells—there was quite a party, and we entered two coaches and returned to West 34th street. We then went to the rear room which I mentioned as Mr. Adams's private office, and there Detective Sergeant Rhinders read the search warrant and immediately we proceeded to search the place. We saw that trunk sitting over in the rear of the room. That trunk, People's Exhibit 2 for identification, is the trunk. When I was in the office before that, with Mr. Adams and Sergeant Rhinders, I cannot say that I had noticed that trunk there. I do not remember whether I noticed that trunk there at the time or not. I did not take a very complete survey of the room. I saw the desk, and I picked up the letter-book, and Mr. Adams denied having any ownership, and that withdrew my attention from anything else in the room. I did not examine anything else in the room. When I came back with Mr. Moss and the others

I did see the trunk and tin boxes there then. The trunk
23 was away back in the rear part of the room, close under one of the windows. The same room in which the desk was. Then I saw three tin boxes in that corner, close to the trunk. These three tin boxes, labelled "A J. A. 1," "A. J. A. 2" and "A. J. A. 3" are the boxes (indicating boxes shown witness, Exhibits 3, 4 and 10). I saw my marks there; those are the ones. I opened the trunk at that time; the trunk was locked; we opened it with a short crowbar which we had with us; and in doing it we broke the lock. We opened the trunk and discovered a lot of manifold sheets. A number of rolls of paper. I opened one of the rolls.

Roll of paper shown witness.

That is one of them. If my memory serves me right there were thirty-six, between thirty and thirty-six. I unfolded a wrapper from one of the rolls and discovered policy manifold sheets inside. I then replaced the wrapper. We did not take any papers out of the trunk at that time and keep them out. We took papers out of the trunk and looked at them and put them back again. They were all placed back in the trunk. Captain Goddard and Mr. Moss and the police officers were all there at the time. The trunk was taken away that day. I opened the tin boxes that day. They were locked, and they were forced open by the police officer, or under his direction, but I do not remember who did it. The papers in the tin boxes were all returned back in the same boxes. I took away the tin boxes at that time. The officer under the warrant did. I remember the desk being opened. Mr. Moss opened that. I remember that there were certain papers, a number of papers, taken there by the officer. Those papers were put into a waste paper basket which stood alongside of the desk. The torn papers in it were thrown out, and these papers, as fast as they were gathered up, were put in the waste paper basket. All the papers that were taken from the desk in Mr. Adams's office were placed in the waste
24 paper basket. All the papers found in the tin boxes were replaced in the tin boxes; we only looked at a few of them; the same is true of the trunk; everything that was in the trunk was left in the trunk. The trunk, tin boxes and the waste paper basket, with their respective contents, were carried down to the coach in front of the premises, and that coach stopped at 308 West 31st street for a short while, and from there was driven down to the criminal court building. McClellan and Mr. Shortridge, Mr. Phillips's secretary, and Isidor Wells, and one of the officers rode in the coach. They went over to 308 West 31st street first, and after waiting there awhile they were taken down to this building. I was present a couple of days afterwards when they were opened in Mr. Phillips's office. The boxes and the papers were all sealed up. The seals were broken in the opening. The seals were intact before the boxes were opened.

People's Exhibit 143 shown witness.

I first saw that in that trunk at 40 West 34th street. It was in the trunk at the time it was taken away from 40 West 34th street. People's Exhibit 11 was found in the same place. Those marks on these papers are mine, for identification. People's Exhibit 142 for identification was found in the same place. People's Exhibit 146 was found in the same place, also People's Exhibit 144. I was present last week in the district attorney's office in the room containing the safe, the storeroom, when Mr. Lord was there, and took off some of the wrappers in order to preserve some of the labels or a piece of the wrapper with writing upon it. I am comparing that framed newspaper with People's Exhibit 144. The framed parts of the newspaper came from the outside wrapper of this package. I identified this paper at the time it was taken off. And that was taken off so that I could identify the paper by comparing the reading matter on the edge by reference to the part remaining on the wrapper.

Framed part of the paper offered in evidence.
Received and marked People's Exhibit 144-A.

That was cut from the newspaper wrapper, People's Exhibit 146. This wrapper was a part of People's Exhibit 146.

Offered in evidence.
Received and marked People's Exhibit 146-A.

Paper shown me is cut from wrapper marked D-4.

Q. Is that the wrapper?

A. Yes, that came from this wrapper. It was on it when I found it in the trunk.

Marked People's Exhibit 11-A.

Mr. RITTENWAY: I contend that it is not admissible, on the ground that, if it is contended on the part of the prosecution that it was in a private part of the premises of the defendant, as is claimed on the part of the prosecution, that they entered there and took forcible possession of it, and are now seeking to offer that which they forcibly took possession of as evidence against the defendant, under that decision of the United States court, viz., Boyd v. U. S., which I cited to your honor upon the last trial, I submit it is not admissible. I did not anticipate that the case would reach this feature of it so early, owing to the way we proceeded on the last trial; therefore I have not arranged my decisions in the way I should.

The COURT: I examined that decision, and will make the same ruling I did at the last trial.

Mr. RITTENWAY: And I except to the admission of it.

That came from the roll marked D-2, and it was a part of that newspaper wrapper on that roll. People's Exhibit 48, envelope marked Sapphire, came from the trunk, 40 West 34th street. It has my mark upon it. The envelope, People's Exhibit 32, P-law, came from the trunk, 40 West 34th street. It has my identi-

fication mark upon it. Exhibit 47, envelope with the word "Baker" upon it, came from the trunk, 40 West 34th street. People's Exhibit 46 envelope marked "Mexico," came from the trunk 40 West 34th street. I mean this trunk which has been identified. The envelope marked McClain, Simpson & Company, being People's Exhibit 45, now shown me came from the trunk, 40 West 34th street, also the envelope, People's Exhibit 33, marked "Old Driftwood," came from the trunk at 40 West 34th street. This envelope contains slips of paper, one marked People's Exhibit 41, and that has a card attached to it, and both of them came from the trunk at 40 West 34th street, and were contained in the envelope marked "Old Driftwood." People's Exhibit 42 came from the same envelope in the same trunk. People's Exhibit 40, the Steve Allen, Hughes and McMicken, came from the same envelope in the same trunk. People's Exhibit 39 came from the same envelope and from the same trunk. People's Exhibit 36 came from the same envelope and same trunk. People's Exhibit 43 came from the trunk. Whether it came from the envelope or not I cannot tell on account of the identification mark not being on it. It may have. People's Exhibit 38 came from the same envelope and trunk. People's Exhibit 44 came from the same envelope and from the trunk. People's Exhibit 37 came
27 from the same envelope and same trunk. When I say the same envelope, I mean the envelope marked "Old Driftwood." People's Exhibit 177 came from the envelope marked "Old Driftwood," and from the trunk. I have these marked with my initial mark, and O. D. "O. D." means Old Driftwood. These other papers now shown me, all of these came from the Old Driftwood envelope and from the trunk. Here is one which came from the Old Driftwood envelope, and has the Old Driftwood mark.

Papers placed in an envelope and marked People's Exhibit B for identification.

That card came from the Old Driftwood envelope. This envelope, People's Exhibit 34 now shown me, with the words blank stamp upon it, came from the Old Driftwood envelope which came from the trunk. Of the contents there is one in particular that I have marked, and that was found in the envelope which was in the Old Driftwood envelope. There is one with some printing upon it. With Bureau Engraving and Printing upon it. That is the one. And those contents were in that envelope at the time I found it there. And the contents of the various other envelopes that I have already identified here to the jury were in the envelope at the time I opened the trunk. I look at this roll, People's Exhibit 144 for identification, and the clipping that is framed, and say the clipping, as framed, came from the roll People's Exhibit 144, and was a part of it that was clipped from this newspaper wrapper on that roll.

Mr. Stedman: That has been marked People's Exhibit 144 A.

The framed portion came from the wrapper of that roll.

Mr. Schurman offers them in evidence.

Objected to; objection overruled; exception.

28 Admitted and marked People's Exhibits C and C-A.

People's Exhibit 143 and the framed portion there, now shown me, and I say the framed part of the newpaper came from the wrapper.

Mr. SCHURMAN: I ask to have the framed portion marked.

Objected to; objection overruled; exception.

Marked People's Exhibit 143-A.

Looking at People's Exhibit 142, and the framed portion of the newspaper here, I say that portion came from the wrapper. It was taken off in my presence.

Objected to; objection overruled; exception.

Admitted and marked People's Exhibit 142-A.

The framed portion of this came from the roll in my hand.

Objected to; objection overruled; exception.

Admitted and marked People's Exhibits D and D-A.

People's Exhibit 166, now shown me, came from the trunk from 40 West 34th street. People's Exhibit 166 came from the trunk at 40 West 34th street. People's Exhibit 149 came from the trunk at 40 West 34th street. People's Exhibit 172 came from the trunk at 40 West 34th street. People's Exhibit 161 came from the trunk at 40 West 34th street. People's Exhibits 152, 154, 173, 158 and 15 all came from the trunk at 40 West 34th street. Where that roll came from I can't tell. I did not see any exhibit mark on it. I have not any mark on that. People's Exhibits 156, 170, 151, 153, 168, 163, 151, 160, 157, 159, all came from the trunk at 40 West 34th street.

29 Mr. Schurman offers in evidence these 21 rolls, being the ones with the exhibit marks last mentioned in the minutes.

Mr. RIDGWAY: I object to it on the ground that it appears by the testimony that the exhibits sought to be introduced in evidence were the result of a seizure of the defendant's personal papers under a search warrant, and I take the ground that the introduction of the same in evidence against his objection is compelling him to be a witness against himself in violation of the Constitution of the United States and the State of New York, and I protest, on his behalf, against their introduction, and say that it is without his consent that they are now offered.

Objection overruled; exception.

This roll shown me came from 40 West 34th street.

Admitted and marked People's Exhibit E.

I have examined the contents of each of these rolls which I have identified here to-day in the presence of the court and jury; and the contents as here to-day are the same as they were when I first saw them in the truck. I remember this roll of empty paper that was found in the trunk also.

Mr. SCHURMAN: There is nothing on it, but I offer it, as I intend to offer everything found in the trunk.

Mr. RIDGWAY: I object to it on the same ground as already stated.

The COURT: I understand that objection applies to all this evidence.

Mr. RIDGWAY: Yes.

Objection overruled; exception.

Admitted and marked People's Exhibit F.

People's Exhibits 67, 70, 62, 68, 69, 63, 64, 175, now shown
30 me, all came from the trunk, 40 West 34th street.

Objected to; objection overruled; exception.

Admitted and marked People's Exhibit G.

That paper came from the trunk, 40 West 34th street.

Objected to; objection overruled; exception.

Admitted and marked People's Exhibit H.

People's Exhibit 174 now shown me, with the three papers in the envelope, and I say that envelope came from the trunk, 40 West 34th street, with its contents. These two papers both came from the same place.

Objected to; objection overruled; exception.

Admitted and marked People's Exhibits I and K.

Mr. SCHURMAN: I now offer in evidence People's Exhibit D, with People's Exhibit D-A, the slip of paper which was taken from the wrapper, and also People's Exhibit 143 and People's Exhibit 143-A, taken from it.

Mr. RIDGWAY: This is all subject to my objection and exception.

The COURT: Yes.

Mr. SCHURMAN: Also Exhibit 143 and Exhibit 143-A, taken from it; also 146 and 146-A, taken from it; also Exhibit 11 and Exhibit 11-A, taken from it; also People's Exhibits C and C-A taken from it; also Exhibits 144 and 144-A, taken from it.

I am familiar with the game of lottery policy. I have played in that game a few times. I am familiar with the materials and
31 papers and writings that are used in the promotion of the game of policy. I acquired that familiarity while I was in the employ of the society I have mentioned, and also as a county detective in the district attorney's office. This roll, People's Exhibit

11, I have examined the contents of that roll already. I had examined that before.

Q. What are the papers which were inside of that roll—I mean the tissue papers?

A. Those are policy manifold books.

Mr. Hinsway: I object to that.

The Court: Upon what ground?

Mr. Hinsway: They speak for themselves.

The Court: I do not think they do. The witness is now testifying as an expert.

Mr. Hinsway: I except.

I know those papers which I have described as policy manifold books are used in the promotion of the game called policy. When an individual makes up his mind to play policy he goes into a place for that purpose, and goes to the man in charge of the place, and says he wants to play 9–19–29, which is known as a dead gig, and he may want to play any one of a number of gigs——

The Court: Meaning by that a combination of numbers.

The Witness: Yes, and he puts ten cents on it, or he may put two cents, or whatever he sees fit, and if he goes in the morning he returned about three-past two and inquires whether the slip has come up.

The Court: What happens when he says he wants to play policy?

The Witness: The man takes his money, and formerly he used to give him what they called a lottery policy, which is a record.

In the case I illustrated it was 9–19–29, and ten cents along-
32 side the gig mark, which would serve to identify him in the afternoon, to find the result of his play, and the writer would record that bet on a similar sheet to these.

The Court: How would he do that?

The Witness: He would take a stylus, or lead pencil, whatever he would see fit to use, and mark in one of those columns 9–19–29—gig mark—ten cents, and he would have a carbon paper over two similar sheets, and make two copies and an original.

The Court: Three copies made altogether at the same time?

The Witness: An original and two copies.

By Mr. Schurman:

Q. Does the player get anything?

A. He used to get lottery policies; but since they got so hot after them——

Q. Well, he got a little slip of paper with the numbers on it?

A. Yes, a record of his bet, so as to identify him on his return. And at the time the book closed, which in the morning was 12:30, those books were sent to headquarters, and at 2:30 the result of the drawing would be sent to these shops by means of what they called a policy slip: in some cases over the 'phone, and others by messenger; and the man who played in the morning would enter and in-

quire for the result, and he would then be handed a policy slip, which is a slip generally stamped with a rubber stamp, having two columns, with the morning drawing. He would then consult each one of those columns to find whether his gig had come out. If it had, he was a winner, and would receive ten dollars, and if it had not he would get nothing.

The COURT: I wanted to have some explanation while the jury are examining those sheets.

33 By the COURT:

Those things which are now being shown the jury are the kind of sheets made up by the person who sold the policy, and which I have seen made; we found them all over the city. I have actually seen them in process of making.

Q. You are familiar with the appearance of manifold books and have seen them in shops many times?

A. Yes.

The COURT: He has already testified that these are similar to manifold books.

These books People's Exhibits 24, 27, 23, 26, 28, 25, 30 and 29 were found in the desk at 40 West 34th street, Mr. Adams's desk. The desk in the office designated on the plan People's Exhibit A as the private office of Mr. Adams. They were taken from there the day the police officers went there to execute the search warrant, and are part of the papers that were placed in the waste paper basket at that time. The books People's Exhibit 141 came from the desk 40 West 34th street.

Mr. SCHURMAN: I offer in evidence the heading of that exhibit, merely showing to whom it was addressed, and from whom: "New York, November 12, 1901. Mr. Albert J. Adams, in account with Thomas & Ecker son, real estate and insurance brokers, members of the Real Estate exchange, Wallack's Theatre building, 33 and 35 West 30th street, William Thomas and John C. Ecker son."

Mr. RUSHWAY: I object to it.

Objection overruled; exception.

Q. Look at People's Exhibit 6 and tell me where that came from.

34 The COURT: I understand that you have a general objection, without the necessity for specifying, and that it applies to all the papers taken from the desk, trunk or tin boxes. Of course if there be any special objection to any particular thing, apart from that general objection, if you will call my attention to it I will rule upon it.

Mr. RUSHWAY: I suppose there might be an additional objection to the private bills and papers which are being read out here on the ground that they do not relate to the game of policy, and there is no pretense that they do.

The Court: The only thing that is being read is the heading for the purpose of identification.

The Witness: It was found in the desk, 40 West 34th street.

Mr. Schurman offers in evidence the heading, "New York, December 7th, 1901, Mr. Albert J. Adams, in account with Parker & Company, special attention given to care of property, real estate and insurance, 40 West 34th street."

People's Exhibit 7 came from the desk at 40 West 34th street.

Mr. Schurman: I make the same offer in reference to the heading there: "New York, December 7th, 1901, Mr. Albert J. Adams, in account with Parker & Company, special attention given to insurance and care of property, real estate and insurance, and so forth.

Objected to; objection overruled; exception.

People's Exhibits 50, 61, 59, 56, 48 and 60 came from the desk at 40 West 34th street. People's Exhibit 108 and that paper, its contents, came from the desk 40 West 34th street, and was
35 wrapped up in the wrapper which I have here. People's Exhibit 8 came from the desk at 40 West 34th street.

Mr. Schurman offers in evidence the heading of that: "New York, November 13, 1901, Mr. Albert J. Adams, in account with Parker & Company," the same thing.

Objected to; objection overruled; exception.

People's Exhibit 92 came from the desk, 40 West 34th street. People's Exhibits 76, 77, 78 and 79 came from the desk, 40 West 34th street. People's Exhibit 181 came from the desk, 40 West 34th street. People's Exhibits 88, 181, 84, 185 all came from the desk at 40 West 34th street.

Mr. Schurman: I offer in evidence the envelope, People's Exhibit 185, showing how it is addressed: The name Geoghegan & Co. printed on the top, addressed to Albert J. Adams, Esq., 35 West 30th street.

Objected to; objection overruled; exception.

People's Exhibit 182, that came from the desk at 40 West 34th street.

Mr. Schurman: I make the same offer for the same reason: "Mr. Albert J. Adams, 40 West 34th street."

Objected to; objection overruled; exception.

People's Exhibits 31 and 71 came from the desk at 40 West 34th street.

Mr. Schurman offers the name written at the foot of that letter, the name to which it was addressed, the addresses.

Objected to; objection overruled; exception.

Admitted and marked People's Exhibit K.

Mr. SCHURMAN: The name to which this communication is addressed is "Albert J. Adams, 35 West 30th street, New York city."

36 People's Exhibits 72, 73, 74, 57, 135, and the envelope, People's Exhibit 138 and contents, came from the desk at 40 West 34th street. In my testimony, when I said from the desk at 40 West 34th street I meant Mr. Adams's private desk at that place.

Objected to; objection overruled; exception.

People's Exhibits 85, 110, a check book, 111, a file with its contents, and 183, came from the desk at 40 West 34th street.

Mr. Schurman offers in evidence the name of the addressee, "A. J. Adams, 40 West 34th street, New York city."

Objected to; objection overruled; exception.

I said that was taken from the desk, People's Exhibits, 83, 82. Envelope marked "Policy bill, Herald, January 29, 1900, the envelope marked People's Exhibit 40 and the contents, and People's Exhibits 80, 87, 93, 109, 91 and 192, all came from the desk, 40 West 34th street.

Mr. Schurman offers in evidence merely the heading of that billhead, of "Samuel A. Teets, plumbing and gas fitting, 587 Eighth avenue, New York, December 1, 1901, Mr. A. J. Adams, Dr.," and so forth.

Objected to; objection overruled; exception.

People's Exhibit 35 came from 366 West 31st street. People's Exhibit 179 came from the desk at 40 West 34th street.

Mr. SCHURMAN: I offer it in evidence and I read it: A. J. Adams on the outside of this tin case, and on the inside cards printed Albert J. Adams, 35 West 30th street. There are several cards in the case.

Objected to; objection overruled; exception.

37 That slip of paper inside of that envelope came from the trunk at 40 West 34th street from one of the rolls in the trunk.

Mr. SCHURMAN: I offer that in evidence marked "People's Ex. L."

Objected to; objection overruled; exception.

People's Exhibit 91 came from the desk at 40 West 34th street. These papers, People's Exhibits 192, 191, 190, 189, and 188, came from the desk at 40 West 34th street.

Mr. SCHURMAN: I offer them in evidence. They are papers printed, of Samuel A. Teets, plumbing and gas fitting, furniture and ranges, 587 Eighth avenue, New York, December 1st, 1901, M, their not being in A. J. Adams, debtor, and billed; the second one the

same way, A. J. Adams, 25 West 38th street, September 1st; the next one, Teet's bill, October 1st, 1901, Mr. A. J. Adams, for 105 West 124 street; the next one, dated November 1st, 1901, sold to Mr. A. J. Adams, 407 West 23th street; the next one, Teet's bill, New York, December 1st, 1901, to Mr. A. J. Adams, for 306 West 31st street.

Objected to; objection overruled; exception.

These were found in the desk at 40 West 34th street. People's Exhibit 92 came from the desk at 40 West 34th street.

Mr. SCHURMAN: I offer it in evidence being an envelope, Thomas & Eckerson, insurance brokers and real estate, Wallack's Theatre building, &c., and the word taken written upon it.

That paper came from the envelope marked "Old driftwood," which was found in that small trunk.

38 Mr. SCHURMAN: That was omitted yesterday. I offer that in evidence.

Objected to; objection overruled; exception.

Marked "People's Ex. M."

Mr. SCHURMAN: This is dated New York, December 1st, 1900, Hotel Savoy, Fifth avenue and 59th street, New York, Mr. Al. Adams, Nebelands to Hotel Savoy, Dr.—and then there is a little bill attached. It is a trifling bill, and is merely offered for the purpose of identification.

People's Exhibit 180, came from the desk at 40 West 34th street, offered in evidence.

This slip of paper, Exhibit 90, came from the desk at 40 West 34th street.

Mr. Schurman offers it in evidence.

Mr. SCHURMAN: I offer them in evidence, but I do not claim they have any significance. If you object I will not press them.

Mr. RITSWAY: The reason that I am not constantly objecting is that his honor very kindly stated that my objection would go to all this proof.

Mr. SCHURMAN: Does your objection apply to this?

Mr. RITSWAY: Yes.

Mr. SCHURMAN: Then I will not press it.

People's Exhibit 181 came from the desk at 40 West 34th street.

Mr. Schurman offers in evidence the heading merely of the two papers, and I read in evidence those printed headings, McLean, Simpson & Co., manufacturers and retail dealers in carpets and furniture, &c., 539 to 541 Eighth avenue, northwest corner of

39 37th street, New York, and the same is on the second page.

Objected to; objection overruled; exception.

Q. Have we now offered, so far as you know, every paper that was taken from the desk and placed in the waste paper basket—so far as you know?

A. So far as I know. There was a mass of papers taken, and I have identified everything that was taken by marks placed on them, shortly after they were taken, in the presence of Mr. O'Connor or Mr. Lord. And at his request I marked every paper. "People's Ex. 134 came from one of the tin boxes at 40 West 34th street.

Mr. Schurman: I offer it in evidence and read the address, "A. R. Baker, reports." That was from a tin box.

Objected to; objection overruled; exception.

This is one from one of the tin boxes that were taken from the rear room with the name Mr. Adams upon the door at 40 West 34th street. The room at the extreme rear of that office suite with the name Mr. Adams on the door, and which room had these tin boxes and desk and chairs, and the floors were carpeted, and the room which had two windows in the rear. People's Exhibit, 124, came from one of the tin boxes found at 40 West 34th street, in the same place I mentioned before.

Mr. Schurman offers same in evidence.

Objected to; objection overruled; exception.

People's Exhibit 65 came from one of the tin boxes taken from the same place. There were three tin boxes taken from that place. People's Exhibit 115 came from one of the tin boxes taken from the same place.

Mr. Schurman: I offer it in evidence and read the address, "Mr. A. J. Adams, 25 West 30th street, ci," the "ty" being torn off, N. Y., with the regular postage stamp upon it.

Objected to; objection overruled; exception.

People's Exhibit 119 came from one of the tin boxes from the same place.

Mr. Schurman offers same in evidence.

Objected to; objection overruled; exception.

People's Exhibit 112 came from one of the tin boxes in the same place.

Mr. Schurman offers same in evidence.

Objected to; objection overruled; exception.

People's Exhibit 132 came from one of the tin boxes taken from the same place.

Mr. Schurman offers same in evidence.

Objected to; objection overruled; exception.

People's Exhibit 119 came from one of the tin boxes taken from the same place.

Mr. Schurman offers same in evidence.
Objected to; objection overruled; exception.

People's Exhibit 112 came from one of the tin boxes in the same place.

Mr. Schurman offers same in evidence.
Objected to; objection overruled; exception.

People's Exhibit 122 came from one of the tin boxes taken from the same place.

Mr. Schurman offers same in evidence.
Objected to; objection overruled; exception.

People's Exhibit 113 was found in one of the tin boxes.

41 Mr. SCHURMAN: I offer merely the name of the person to whom that communication was addressed, New York, June 30, 1900, Mr. A. J. Adams, 35 West 35th street, dear sir.
Objected to; objection overruled; exception.

People's Exhibit 121 was found in one of the tin boxes taken from the same place.

Mr. SCHURMAN: I offer it in evidence, but do not press it if it is subject to the objection.
Mr. RIDGWAY: My objection is addressed to the admission of all these papers.
Mr. SCHURMAN: I do not press it then, but will have it, and same is marked for identification.
Paper was marked "People's Exhibit 121 for identification."

People's Exhibit 114 came from one of the tin boxes taken from 40 West 34th street. And also People's Exhibits 116 and 130. Also People's Exhibit 117.

Same marked People's Exhibits 116, 130 and 117 for identification.
Objected to; objection overruled; exception.

People's Exhibit 120 came from one of the tin boxes at 40 West 34th street.

Mr. SCHURMAN: I offer it in evidence and read the address on the envelope, Mr. A. J. Adams, 35 West 30th street, New York.
Objected to; objection overruled; exception.

All these papers shown me came from one or the other of the three tin boxes found in 40 West 34th street, in the room I have mentioned.

Mr. SCHURMAN: I offer the address on the envelope in each case, and will asked to have them marked.
42 Objected to; objection overruled; exception.

Papers marked People's Exhibits N, O, P, Q, R and S, respectively.

People's Exhibit 53 was found in one of the tin boxes in Mr. Adams's office at 40 West 34th street.

Mr. SCHURMAN: I will have that marked for identification and will offer it later.

Objected to; objection overruled; exception.

Marked People's Exhibit 53 for identification.

That paper was found in one of the tin boxes at 40 West 34th street.

Objected to; objection overruled; exception.

Same marked People's Exhibit T for identification.

At your request this morning I went over a number of papers that were separated in one of the tin boxes and examined my identification marks upon each of those papers. I afterwards folded that bundle of papers up in that form and put my seal upon them. That is the bundle I treated in that way. All the papers and books and other articles that are in that bundle came from one or other of the tin boxes which came from 40 West 34th street.

Mr. Schurman offers this bundle in evidence.

Mr. RITSCHWAY: It is subject to the same objection and ruling.

The COURT: I understand the objection is not because they are in a bundle, but is the same general objection you have heretofore taken.

Mr. RITSCHWAY: Yes.

Exception.

43 Admitted in evidence and marked People's Exhibit U.

I looked at these other things in this box, A. J. A. No. 1. Those things were in one of the tin boxes found in 40 West 34th street.

Mr. Schurman offers them in evidence, but do not press it under your objection, and they have nothing to do with it.

Mr. RITSCHWAY: I do object.

Objection overruled; exception.

Mr. Schurman offers in evidence the tin boxes themselves. People's Exhibits 3, 4 and 10.

Mr. RITSCHWAY: May I ask that those papers or articles that you do not press may be kept separate, so that they, not being in evidence under the ruling of his honor, will not go to the jury.

Mr. SCHURMAN: Certainly. I now read the initials on each of these boxes, A. J. A. No. 1, A. J. A. No. 2, and A. J. A. No. 3.

Q. So far as you know, has the district attorney offered everything and every paper in evidence that was found in the three tin boxes?

Objected to; objection overruled; exception.

A. So far as I know, yes.

Q. Has everything been presented to you for identification here that was found in the trunk at 40 West 34th street, so far as you know?

Objected to; objection overruled; exception.

A. So far as I know, yes, sir.

I think I have described what took place at 40 West 34th street up to the time of taking the property out of there. It was
44 then placed in a coach and brought down to the district attorney's office, and in the custody of Mr. Shortridge, the district attorney's private secretary, and McClellan and Wells.

Cross-examination by Mr. RIDGWAY:

I went to 40 West 34th street. The day of the raid was December 12th, 1901, two years ago this coming December. I have not been to the office there since. I have passed there, if I recollect rightly, several times. I believe I have examined this diagram I believe, at the start of my examination. If my memory serves me right, the name of Pocher & Company was on the plate glass front of the building. There is a very large plate glass front, and the letters were quite noticeable. I don't think I was ever in this office before the 12th of December, 1901. When I entered in there on the day in question, there were some gentlemen behind the desks, and I took them to be clerks. The desks that I speak of were not in what I have called Mr. Adams's room, there were a number of people behind a sort of desk partition. I did not pay any very close attention to it. There were people behind there. It was ostensibly a real estate office, I am positive it was, yes; so far as I was able to observe there was nothing else there. At the time of my first visit, when I went there the day of the raid, I went there twice, and the first time I went there I could not tell exactly how many people were there; there were at least a dozen people there scattered through the premises; a dozen people, more or less. That was December 12th, the first time I visited it, we made the raid. I made two visits the same day. I entered practically flush with the street, it may have been a step down.

The COURT: I suppose, Mr. Schurman and Mr. Ridgway, there will be no difficulty in both sides agreeing that the office of
45 Pocher & Company were a *bona fide* office, in which there was quite a number of people employed, who were in no wise concerned in this controversy.

Mr. SCHURMAN: Yes.

The COURT: And furthermore, there is no claim that there was any actual playing of policy done in those premises.

Mr. SCHURMAN: Yes.

Mr. SCHURMAN: By playing policy, I mean, of course, persons coming in and making bets there.

The Court: Yes; I mean playing in the ordinary expression of the term.

The room that I have designated as Mr. Adams's is marked Mr. Adams's private office on the map (indicating plan handed witness). I know of no other office that Mr. Adams had on those premises than that. My recollection is that that desk was a little bit farther this way, but that may be an error. It was in the room, yes. There was this desk, and there are other marks here, they are chairs. Whether that is a wardrobe I am not positive. I would not say whether it was or was not there. That is what I called Mr. Adams's room, in speaking in the testimony. When I stepped in the room first it was in the neighborhood of three o'clock, about three o'clock in the afternoon. Rhinders was with me when I went looking for Mr. Adams the first time, and I opened the door upon which was the name Mr. Adams. There were four in our party. We all entered the building at some time or other; before we left the first time, all were in the building. We went back to this room in the rear which I have designated as Mr. Adams's room on our first visit that day.

Q. Was Mr. Adams there?

A. No.

46 Q. Was anybody in the room?

A. Nobody. There was nothing in the room so far as I was able to observe that any game of chance of any character was being played or carried on there; I saw none. I was looking for Mr. Adams only, and paid attention to no one else. When we found he was not there we left immediately. We did not leave the building. I turned around and started for the front part of the office, and as I did so I saw Mr. Adams entering the door from 34th street. When I first spoke to him he was about midway between the main entrance and his office. That would keep him in Pocher's main office. I had some conversation with him; it resulted in this search of the premises that same day, within half an hour or forty minutes.

Q. Where did Mr. Adams go, and with whom, after you apprehended him—I assume you arrested him?

A. I did not. Detective Sergeant Rhinders.

Q. When I say you, I do not mean personally, but he was arrested by your party?

A. I understand, yes. We went back to his private office in the rear and had a conversation, and as the result of that conversation we went out and got into the coach that was in the front of the door, and drove to 366 West 31st street. By my suggestion Rhinders designated McClellan and Reardon in charge of that office after we left. When I left them there these boxes or the desk or anything, had not been opened; not that I know of. When I went in the office I did not try the desk to see if it was locked. It was closed. The

tin boxes were locked, that I know. The tin boxes were in the extreme corner of that private office, close to the window in the rear.

Q. So you could see them without any trouble?

A. When you got up there they were back behind the desk. They were not concealed in any way. When you got in range of them you could see them in plain view. They were locked,
47 I think. I may have assisted in opening the boxes. I am not clear on that now. Some one of our party opened them. Whoever opened them used force to do it; we used a short iron bar that we had with us. Mr. Adams was not there at the time they were opened.

Q. Do you know whether the desk was opened by force, too?

A. Well, that is a question. Mr. Moss and Captain Goddard were there, and they just took hold of it, and it seemed to me it came away very easily, so much so that it led me to the impression that the desk was unlocked. This man that was called Captain Goddard was there, too. Mr. Adams said, "I warn you not to touch anything here, there is nothing here belongs to me."

Q. Then, whatever was taken in the place was taken against his protest, was it not?

A. Naturally so.

Q. Did you have a search warrant?

A. No.

Q. Who had it?

A. Detective Sergeant Rhinders had it at that time.

Q. Did you ever have it in your hand?

A. I don't think that I did. Detective Sergeant Rhinders is a regularly appointed policeman attached to the district attorney's office. He was the only member of the police force then present. No other member of the police force took any part in the proceedings that I have described to the jury; it may have been that there was one other came with us on our second visit, but I am not sure. I do not recall his name. We had a number of officers at 366 West 31st street, and it is just possible that one of them came along with us on the second visit, but I am not sure of that, and will not swear one way or the other on that. There were no other desks on this floor searched. That ended our proceedings so far as 40 West
48 34th street went. We gathered together what we thought was necessary. We never had occasion to go there after that. To the best of my recollection, all that I have stated to this jury, the visits on this day in question embraced all that I observed of these premises. I have been chief county detective since January 1st, 1902. I believe that office was created under Colonel Gardiner. I am not competent to state whether it was an office that has always existed in the county. It is distinguished from a regular police department official. I had been previously engaged as assistant superintendent for the Society for the Prevention of Crime. I was there about a year and a half, I think. Before that I was assisting Mr. Frank Moss in the Mazet investigating committee. Mr. Moss has no

society. He is a member of the executive committee and counsel to the Society for the Prevention of Crime. That is the one I was assistant superintendent of. Mr. Moss was a member of the executive committee. I was not on the executive committee. I was simply assistant superintendent. He was counsel for that society. Before that I was not connected with any other society. I was in the fruit business for myself with my father. I was being paid for my services. I am not a philanthropist. Whatever I do is for pay.

Redirect-examination by Mr. SCHURMAN:

As county detective I filed my oath of office with the county clerk here. When I spoke of two visits to 40 West 34th street on December 12th, I meant by that those two occasions when I went with Rhinders and then went away, deciding to get a lawyer before we proceeded under the search warrant. When I went there I saw about a dozen people behind the rail, or in Pecher's office, in the entire premises. By the entire premises I mean in Pecher's office, inside of the rail, and in Pecher's private office and scattered around.

49 The various papers which I have identified here today and yesterday, were by Mr. Edward J. Reardon and myself. Mr. Reardon has marked every paper that I marked. Mr. Lord and Mr. O'Connor were there at the time.

HENRY R. STEELE, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct examination by Mr. SCHURMAN:

I reside at No. 171 West 73rd street. I am a lawyer by profession. I am at present treasurer of the Title Insurance Company of New York and the New York Mortgage and Security Company. I know the defendant Albert J. Adams; I have known him since 1899, the spring of 1899. I have seen him write. I have seen him sign his name on various occasions to instruments which I received at the title company and elsewhere. I have also seen him write memoranda of various things.

Q. Have you ever seen him write, sign, or have in his possession, a book or books of the same general appearance as People's Exhibit 26, which I now show you?

Mr. RIDOWAY: I object, and ask the right to interrogate the witness preliminarily.

By Mr. RIDOWAY:

I am an attorney and counselor at law. At various times I was with a law firm, and I was with the Lawyers' Title Insurance Company, and I am now treasurer of an independent company.

Q. Well, Mr. Steele, at the time you saw Mr. Adams write and became familiar with his signature, did that knowledge come to you by reason of the fact that you acted as attorney for him?

Mr. SCHURMAN: I object to that question.

The COURT: Objection sustained. We will get out the facts as to what he did.

Exception.

50 Q. Was Mr. Adams conducting law business with the firm with which you were then?

A. He was there borrowing money, and we examined the title to property that he wanted loans on. The examination was made by attorneys, lawyers. I examined some of the titles. I examined the title for him for a loan when I was with this law firm, but I did not examine any more, for after that I closed titles, and now I do not do such work.

By the COURT:

When I first knew Mr. Adams I was in the employ of Curtis, Mallet & Provost, and I had charge of their real estate business, and most of their real estate business was making loans on property. They were lawyers, and I was a lawyer. Mr. Adams applied to that firm for a loan upon real estate through a broker. And it was part of the arrangement or agreement between the firm and him that he should compensate them out of the loan for the expense that they were put to in searching the title. My acquaintance with Mr. Adams's handwriting arose from my doing the work for Curtis, Mallet & Provost under those circumstances. That transaction was the only professional relations I had with Mr. Adams at that time. Subsequently I became associated with the Lawyers' Title Company. There my duty was to close titles, and not to do anything else. I was paid a salary by that company. Whatever acquaintance I made then with Mr. Adams's handwriting was made in the process of closing loans which he had negotiated with the title company. Since I have been in this other company I have had relations of a similar kind with him; the company has. I do not go outside the duties of an officer. Professionally, in performing the duties of an officer, I was brought in personal contact with Mr. Adams, and under those circumstances have seen him write.

The COURT: Anything further?

51 Mr. RIDGWAY: I think your honor has covered it fully. Now, I object to his testifying upon the ground that the information and the knowledge which is made the basis of his testimony was acquired in the confidential relation between this defendant and the witness and the firm that the witness acted for, and it is a privileged communication, and cannot be testified to.

The COURT: Since the last trial of this case I have taken occasion to re-examine that question, which was submitted under this same witness's examination then, if I recall it, and I have come to the conclusion that the communication is not a privileged communication, and is not a communication made by a person, a client, to his counsel, for the purpose of procuring his advice or assistance. I

doubt very much whether the relation of client and counsel ever existed between Curtis, Mallet & Prevost, but even if it did, whatever Mr. Steele did in relation to closing these titles is not, in my opinion, of a confidential character.

Mr. RITSWAY: I except.

By Mr. SCHURMAN:

I saw the defendant Adams in possession of a book bearing the same general appearance as People's Exhibit 26. A red book about that size. I saw him making entries in it. I think I remember a couple of times. The instruments which I saw Adams sign were bonds and mortgages and checks, which were intended to be delivered to people. I never saw him make any promissory notes. The company would receive these bonds and these mortgages as the genuine instruments of the defendant Adams. And in that way I acquired this familiarity with this handwriting. I recog-
52 nize the handwriting on People's Exhibit V for identification. The handwriting is the defendant's.

Offers same in evidence.

Mr. RITSWAY: I make the same objection.

Objection overruled; exception.

Received and marked People's Exhibit V.

I saw the defendant sign the name Albert J. Adams on the back of that check, People's Exhibit 100. I saw him sign that.

Mr. SCHURMAN: I offer that in evidence.

The COURT: You offer that as a standard.

Mr. SCHURMAN: Yes.

Mr. RITSWAY: I object to it as being immaterial and irrelevant and no bearing upon the issues.

Objection overruled; exception.

In People's Exhibits 101 and 102 the words, "Pay to the order of Mary E. Benjamin, Albert J. Adams," in one case, and the words, "Albert J. Adams," in the other case are, in my opinion, in the handwriting of Albert J. Adams. I have no doubt about that.

Mr. SCHURMAN: I offer them in evidence.

Objected to as irrelevant and immaterial; objection overruled; exception.

I cannot answer as to People's Exhibits 106 and 107 being letters which the title company received from Mr. Adams. I did not open the mail then. I recognize on those the marks of the Lawyers' Title Insurance Company. I recognize the handwriting of Albert J. Adams affixed to each one.

By the COURT:

53 The only thing I can identify is the marks made upon those letters by my superiors, indicating that they were received by the company.

By Mr. SCHURMAN:

William F. Baecke was a notary in the employ of the Lawyers' Title Company (People's Exhibits 103 and 105 shown witness). I recognize that handwriting in the signatures of those affidavits. In my opinion it is Mr. Adams's handwriting.

Offers same in evidence; same objection, ruling and exception.

Those are the regular affidavits of title that we take in the Lawyers' Title Company. In my opinion the handwriting in People's Exhibits 54 and 55, in the body of the signature, is the defendant's handwriting. I have no doubt about that being in the defendant's handwriting.

Offered in evidence as a standard.
Same objection, ruling and exception.

(Paper shown witness.) I think that is the defendant's handwriting.

Offered in evidence.
Same objection, ruling and exception.
Received and marked People's Exhibit W.

I recognize the handwriting in the front pages of People's Exhibits 50, 61, 59, 56, 58 and 60. I have examined those papers before. I think it is the defendant's handwriting. I have no doubt about that.

Same offered in evidence as standards, being papers that were taken from the desk at 40 West 34th street.
Same objection, ruling and exception.

I have examined People's Exhibits 26, 23, 27, 25, 30, 28, 24, 29. I went over them about a dozen times in your office. I have an opinion as to the handwriting in those books, all except the
54 identification marks and page numbers. I think it is in the defendant's handwriting.

Same offered in evidence.
Same objection, ruling and exception.

(Brewery book, College point, People's Exhibit 30, page 4, November, shown witness.) I think that is in his handwriting, and the figures are his. People's Exhibit 39, page 114, "a to dol., Nov. 17," as well as the line above it, is, I think, in the defendant's handwriting. I think the handwriting on the back of that slip of paper, in blue pencil, People's Exhibit D, is the defendant's. I think the Nov., with the line drawn through it, is the handwriting of the defendant.

Mr. SCHURMAN: I offer that in evidence and as part of the papers marked perhaps that may go in as part of the same exhibit, Exhibit D.

Same objection; same ruling and exception.
People's Exhibit 49 shown witness.

I think the defendant wrote the words, "Policy, bill Daily *Herald*, January 29, 1900." The words "*Herald*, January 29th," are in the defendant's handwriting.

Same offered in evidence.
Same objection, ruling and exception.

I should think that in People's Exhibit 108 the word "Sapphire" is in the defendant's handwriting.

Same offered in evidence; same objection, ruling and exception.

I think the defendant wrote the words "Edward's papers," in People's Exhibit 138.

Same offered in evidence.
Same objection, ruling and exception.

55 Q. I take from the envelope a paper, at the foot of which is written a certain thing in pencil. Have you an opinion as to who wrote that?
A. I could not identify all of that, but I identify part of it.
Q. Can you identify part of it?
A. Pierce, the "P" only.
Q. The "P" only?
A. Yes.

Same offered in evidence.
Same objection, ruling and exception.

In People's Exhibit 185, the words "Civic Club, Goddard," are, I think, the defendant's writing.

Same offered in evidence.
Same objection, ruling and exception.

I think People's Exhibit 111 is in the defendant's handwriting.
The defendant, in my opinion, wrote the word "int" on People's Exhibit 89.

People's Exhibit 186, People's Exhibit 5, also People's Exhibit 187, offered in evidence.

Same objection, ruling and exception.

I think the defendant wrote People's Exhibits 72, 73, 74, 75 and 57.

Same offered in evidence.
Same objection; ruling and exception.

I do not think I can identify all of People's Exhibits 76, 77, 78 and 79.

I can identify some of those additions, and the words "loss" and "gain," and the mouth mark. Those I do identify.

Q. And seeing those parts in there which you think are his, have you an opinion as to the writing of the whole thing?

A. No, I have not. I recognize the handwriting "Sap-
56 phire" on that envelope, People's Exhibit 48. It is Mr. Adams's handwriting.

Same offered in evidence.
Same objection, ruling and exception.

The defendant wrote People's Exhibit 32, P—law.

Same offered in evidence.
Same objection, ruling and exception.

I think on People's Exhibit 46 the word "Mexico" written upon it is the defendant's writing.

Same offered in evidence.
Same objection, ruling and exception.

I think the defendant wrote People's Exhibit 45. I have no doubt about it. The McClain, Simpson & Company, 1900, is what I mean.

People's Exhibit 45 offered in evidence.
Same objection, ruling and exception.

Mr. RIDGWAY: Is it contended that these statements are nothing else except statements as to house and loans and taxes.

Mr. SCHURMAN: I do not claim that these have anything to do with policy, but I am going to use these to connect Mr. Adams with the desk in that office.

The defendant wrote People's Exhibit 47, the word "Baker."

Same offered in evidence.
Same objection, ruling and exception.

I think the defendant wrote Exhibit 33, the words "Old Driftwood."

Envelope handed witness.

I think the defendant wrote the words "Blank stamp."
57 The main part of the entries on Exhibits 41, 42, 40, 39, 38, 43, 36, 37, and 44, I think the defendant wrote.

All offered in evidence.
Same objection, ruling and exception.
People's Exhibit 74 offered in evidence.
Same objection, ruling and exception.

People's Exhibit 68, in my opinion, is the defendant's handwriting. I have no opinion on People's Exhibit 67.

People's Exhibit 68 offered in evidence.
Same objection, ruling and exception.

The defendant wrote People's Exhibit 70.

Mr. Schurman offers same in evidence.
Same objection, ruling and exception.

These were found in the trunk. People's Exhibit 62, the McClain, Simpson & Company is in the defendant's *handwriting, I think.*

Mr. SCHURMAN: I offer them in evidence, and I will ask you to compare that with the McClain, Simpson & Company envelope also found in the trunk.
Same objection, ruling and exception.

The "August 3" on Exhibit 122, taken from one of the tin boxes, I think the defendant wrote it. People's Exhibit 112, August 7th, I think the defendant wrote it. People's Exhibit 119, Ludlow, Day & Co., I should think the defendant wrote it. People's Exhibit 132, Rothschild adv't, or something, advertisement, I think the defendant wrote it. July 25th and August 7th, on People's Exhibit 120 and People's Exhibit 115 respectively, I think the defendant wrote those. The statement in blue pencil on People's Exhibit 65, I think the defendant wrote that.

Mr. SCHURMAN: I read that in evidence: Box 1, miscellaneous; box 2, monthly statement; box 3, monthly statement.

58 People's Exhibit 134, A. R. Baker reports, I think the defendant wrote it.

Mr. SCHURMAN: I offer that in evidence.
Same objection, ruling and exception.

People's Exhibit 124, this paper, on it I recognize the handwriting of Albert J. Adams on that paper, Pope notes.

Mr. SCHURMAN: I offer that in evidence.
Same objection, ruling and exception.

People's Exhibit 113, that word "Pocher" in blue pencil, the defendant wrote.

Mr. SCHURMAN: I now read *from* the jury the entry from People's Exhibit 23, taken from the desk, on page 103, Mrs. Baker, with certain entries after that, and this envelope in the same handwriting, A. R. Baker reports, both being testified to as Mr. Adams's handwriting.

People's Exhibit 143-*a*, the word "X," Nov. 15, in black lead pencil, printed at the top or on the side of the sheet, that is, in there on its side, I think the defendant wrote that Nov. 15.

Mr. SCHURMAN: I call *to* your attention while you are looking at that Nov. 15 to the Nov. on that page in the book at the same time.

You will remember that the newspaper was taken from the wrapper in the trunk.

People's Exhibit 146-a, night. Nov. 13, in blue pencil at the top. I think it is in the defendant's handwriting.

Mr. SCHURMAN: May I ask you gentlemen to look at the Nov., the "ov" with the "ov" in that book.

59 People's Exhibit 11-a, at the "Nov. 15," and printed in pencil at the bottom. I think it is in the defendant's handwriting. Nov. 25, X, on People's Exhibit C-a. The defendant wrote that.

Mr. SCHURMAN: I will ask you gentlemen in looking at Nov. 25, X, to note the X also in that book, Exp.

Q. People's Exhibit 144-a, and I want you to look, if you will, at the words Nov. 14, night?

A. I think the defendant wrote that. People's Exhibit 142-a, the X Nov. 14. I think the defendant wrote that. People's Exhibit D-a, the word Nov. 20 printed on there. I think the defendant wrote that.

Mr. SCHURMAN: I ask you gentlemen to look at that and you will see in the Brewery Book on page 4, when you get a chance of compare it—I ask you to compare the "n" on page 27 of People's Exhibit 26 with the "n" of "night" of People's Exhibit 144-a, the two upright lines with the stroke connecting them.

As to the words West Side upon that check book, I never saw that before, but I think it is the defendant's handwriting. It is very faint. I could not testify to it, though.

No cross-examination.

FRANCIS M. LEAKE, called as a witness on behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

I am connected with the Union Dime savings bank. Mr.
60 George N. Birdsall was formerly treasurer of that institution. He died in May. People's Exhibit 55, now shown me, was produced under subpœna from the files of the Union Dime savings bank. We have dealings with the defendant Adams there.

Mr. SCHURMAN: That is all. That is the Birdsall letter, a copy of which is in the book.

No cross-examination.

CHARLES HENDRICKSON, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct examination by Mr. SCHURMAN:

I am an official in the office of the county clerk of Queens county in this State. I have produced certain papers under subpœna that are on file in the office of the county clerk in Queens county. These are the papers which I now hand you.

Mr. Schurman offers in evidence these two annual reports of the Karsch Brewing Company, signed by the defendant and acknowledged before a notary public.

Mr. RIDGWAY: I object on the ground that they are irrelevant and immaterial and have no bearing upon the issues.

The COURT: What is the purport?

Mr. SCHURMAN: I want to use them as standards, acknowledged, as it is, before a notary, and then I want to connect it with the red book, referring to the brewery at College Point.

The COURT: I will admit it.

Exception.

The books were admitted in evidence and marked People's Exhibits X and Y.

No cross-examination.

61 CHARLES FLANNIGAN, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

I am in the employ of the county clerk of Richmond county, New York. I have produced here certain papers under subpœna to him.

Mr. Schurman offers in evidence certificate of incorporation of the Sapphire Match Company, signed by Adams, acknowledged before a notary, and on file in that office.

Mr. RIDGWAY: Objected to as immaterial, irrelevant, and having no relation to this issue that we are trying.

Objection overruled; exception.

Admitted and marked People's Exhibit Z.

SAMUEL SHORTRIDGE, JR., called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

I am a member of the bar of the State of New York. I reside at Hempstead, Long island. I was formerly private secretary to Mr. Justice Beekman, of this county, now deceased. I was his confi-

dential and private secretary from January, '94, to December, 1900, when he died. After his death I was appointed a deputy assistant under Mr. Philbin, who was just about that time appointed district attorney of this county. Judge Beekman had not been Mr. Philbin's partner. They had been associated in business. So that I knew Mr. Philbin. I then came into the district attorney's office under Mr. Philbin on or about January 1st, 1901. And I continued to be his private secretary as well as deputy assistant district at-
62 torney, until his term expired. I remember going on the 12th of December, 1901, while I was such private secretary, to No. 40 West 34th street in this city and county. I went there with Mr. Moss and some agents of his society, and Captain Goddard and some agents of his society, and two detective sergeants from the district attorney's office. We went to a building in West 31st street first. That was 366 West 31st street. Then, after being in there, we went over from 366 West 31st street with certain persons to 40 West 34th street. I went with Mr. Hammond, Mr. Moss and Mr. Goddard to 40 West 34th street. There were two carriages. And when we got over there I found some of the other men had come over before. I believe Detective Sergeant Rhinders was there and Mr. McClellan. And Mr. Reardon possibly; there were two or three others. I remember entering into the premises with the name Pocher & Company on the outside windows. Looking at People's Exhibit A, the drawing of the suite. Entering here from 34th street, this building is on the south side of the street; we entered here and came into the suite of Pocher & Company, this being the hallway, and the elevators, we turned in here; I remember that we came in through this entrance, through the front hall, to the real estate office (indicating). Down through this space marked "Real estate office." We came to the rear. We walked down to the rear of Pocher & Company's office, and turned slightly to the right, and went through a room marked storeroom here (indicating) and opened a door on which was marked "Mr. Adams," a glass door, and went into the rear office which is represented here. I mean by the rear office which I entered, the office marked on the plan Mr. Adams's private office. I do not remember the reading of a search warrant. I do not remember about that. There was a roll-top desk, and possibly two or three chairs, a trunk and three tin boxes, and, as I recall it, a cabinet, or wardrobe, a little article of furniture along the right-
63 hand wall. I remember seeing the roll-top desk opened. I saw some papers taken from that. The entire contents of the roll-top desk were examined by Mr. Moss and Captain Goddard in my presence, and some of them were replaced in the desk as they had been found, and others were placed in a waste paper basket. All the papers which were taken from the desk and kept, while I was there, were placed in the waste paper basket. The three tin boxes were opened, and the papers inside of them examined in the same way. These tin boxes now shown me (People's Exhibits 3, 4 and 10) are the three tin boxes which were opened

there that day. The tin boxes were pried open with some metal instrument. The marks are here on the side, I think; they were locked. After the boxes were forced open, some of the papers from the tin boxes were examined there in my presence. Detective Sergeant Rhinders of the police force was there all the time. The papers from the tin boxes when they were taken out were examined and immediately replaced in the boxes. This trunk, People's Exhibit 2, is the trunk which I have testified to as having seen there that day. The trunk was locked when I entered there. An instrument was used in forcing open that lock, a small iron bar, I believe. And in that way this piece of lock here was forced out. I remember seeing a single roll of papers removed from the top of the trunk and partially unrolled by Mr. Moss, I think, and put back in the trunk. I saw the contents of the roll, its general appearance. The contents of that roll were substantially the same in appearance as the contents of the roll People's Exhibit 11—I mean this roll of tissue paper with numbers upon it. I noticed other rolls in the trunk at the time which were not examined. There were other papers which were not examined. The paper that was taken from the trunk was put right back and the trunk was closed. I remember a cord being put around the trunk then. The trunk
64 and its contents, three tin boxes and their contents, and the waste paper basket and its contents, were carried out to the carriage which was waiting at the door, and placed in there and taken in my charge around to the house in West 31st street. I went around to the house 366 West 31st street. This property wasn't taken from the carriage there at all. The property was in my care. I went to these houses at the direction of the district attorney of the county at that time, Mr. Philbin. I assumed personal responsibility for the papers that were taken. When I drove over to 366 West 31st street, I got out of the carriage and stood on the sidewalk for a few minutes in conversation with Mr. Moss, just by the door of the carriage. I then directed the driver to proceed to the Criminal Court building, and I got back in the carriage and came down here. While I was there talking to Mr. Moss, I was right beside the carriage door. I believe that Mr. McClellan was there in the carriage there with me while I was going in charge of the property. The present county detective. I believe Mr. Isidor Wells went with me as far as 366 West 31st street, in the carriage; he also came down to the district attorney's office with me, so that I and Robert McClellan, and Isidor Wells, after I got to 366 West 31st street, and after I had a few words with Mr. Moss, came down to the district attorney's office, in this building, with the property. I brought it upstairs to the chief clerk's office of the district attorney's office, the clerk who has charge of all the records there and indictments. And there the waste paper basket and the tin boxes were wrapped up in heavy wrapping paper and cord, and sealed under my direction, and the seal was also put upon the cord that was around the trunk. Before leaving 40 West 34th street a brown

paper was put over the top of that and tied around it so as to keep the papers in there. And when we came down to the district attorney's office, with the assistance of the clerk we tied up the trunk and put seals over the
65 cords. Looking at these seals, with the broken space between parts of them. Two of them would be the ones we put on and the other two might have been put on at another time. I remember the seals were put on and were initialed by myself and others so that the cord could not be removed or broken open without breaking the seals. That was done also in the case of the tin boxes and the waste paper basket. All the property was put that night in a closet off of the private room of Mr. Philbin in this building. I remember seeing that property again about two days afterwards, two or three days afterwards; the tin boxes, the trunk and waste paper basket was taken into Mr. Philbin's private room, and Mr. Moss was there, Mr. Keyron J. O'Connor of the district attorney's office, and Mr. Wells, I think, was there, and myself, there may have been others there, but I do not recall their names. Mr. O'Connor, of the district attorney's office, is Keyron J. O'Connor, the deputy assistant district attorney, he took charge of the papers that day under the direction of Mr. Philbin. The boxes and trunk and waste paper basket were opened that day. The seals were examined before they were opened. The seals, with the initials upon them on all this property, were intact, and some of the property was examined that day. The property from the waste paper basket which was examined that day was replaced in the waste paper basket and tied up again, and resealed. Each paper which was taken from the tin boxes and examined that day was replaced in the tin box from which it was taken and the box tied up and sealed in the same way as they had been formerly fastened. The papers from the trunk which were examined that day were replaced in the trunk, and it was resealed in the same way, so that in each case the basket and boxes and trunk could not be opened without breaking the seals again; that is correct. I wasn't present at any other reopening of these boxes. 40 West 34th street is in the county of New York.

66 Cross-examination by Mr. RIDGWAY:

I testified in this case when it was tried about a year ago. I have not refreshed my memory since that in any way. I have not talked over the case since that. I have had several conversations since that but none about this case; none about the case with Mr. Schurman, but about coming here to testify. At present I am practicing law in this county and also in Nassau county. I am not employed now by the district attorney or by any official. The day that I went to Pocher's office was the 12th day of December. I do not depend upon my memory for that, not entirely. I have heard the date spoken of this morning and that has refreshed my mind. I

went with Mr. Moss and Captain Goddard, and I think Mr. Hammond. Mr. Moss is the one who is counsel for one of the societies. Whether he is a director, I do not know about that. And Captain Goddard, he has another society of his own. Mr. Hammond was with us. The four of us occupied the coach. At that time I was a deputy assistant under Mr. Philbin and was acting as his private secretary. We reached this place in 34th street, I should say it was about three to half-past three o'clock, probably about half-past three in the afternoon. Four of us all went into the place. When we got in there we found it was Pocher's real estate office as we entered. I saw the clerks there. I didn't see anything that indicated to me that any gambling game was going on in the place. That is conceded by the district attorney that no game was in progress there. We went to the back room. Nobody interfered with us or intercepted us in any way; not at all. And before reaching it we found a room called a storeroom. There was a small, half-dark room, an interior room. First we passed through that and we came to a glass door leading to a room in the extreme rear. That had Mr. Adams's name on it. That was the only door I noticed that had his name on. When we went in there we found it
67 bore the appearance of an ordinary office. It is quite a long room; I do not know how long it is. Is it fairly indicated on this survey. I should say so; yes (indicating People's Exhibit A). Mr. McClellan was in there. I did not say he went with us. I said he was one of those at that place on that day. He did not accompany me from the West 31st Street house. I made only one visit there. When I made my visit I believe he was in there. To the best of my recollection he was. I am not positive about anybody else being there in the room when we entered it. When we saw McClellan in this room I don't remember his attitude at all. I believe he was standing up, and when we opened the door he came to meet us. I didn't know McClellan at that time when I met him in the room. I simply knew him as one of Mr. Moss's agents. I knew who he was. I had seen him earlier that day. I didn't say he opened the door to meet me or to admit me. The door was closed; I don't know whether it was actually shut or not, but it was closed. To get in, I pushed the door back and walked in; the desk was closed at the time.

Q. And were these boxes that you say you found there the private boxes of this man? Were they locked and in his own office?

A. They were in that rear room.

Q. Were they locked?

A. Yes.

Q. Do you know whether his desk was locked?

A. No, I do not.

Q. And were the boxes of this man broken open in your presence?

A. Yes.

Q. And was his desk broken open in your presence?

A. The top was raised; yes.

Q. Do you know whether the lock was forced at all?

A. That I do not know.

68 Q. Do you know whether they put a jimmy in it?

A. No; they used no instrument; it was simply done by the *the* hands, and then the private papers of this man were taken out by Moss, Goddard and others, and read and examined there at the office in my presence, and then thrown into a waste paper basket. I didn't see Mr. Adams in there at any time; I didn't on my way out from this place, meet Mr. Adams at all coming in from the street; I never saw Mr. Adams; I never heard him protest at any time against this interference with his private property; I never saw him; I did not see them read his letters. I didn't read any of them; I examined none of the papers; I didn't take any of them in my hands. The roll of paper that I have referred to here wasn't passed into my hand and examined by me at all. I simply saw that the paper was examined as I have testified. I noticed there were figures upon it; I only examined it in a general way, to get an impression of the character of the paper. I saw that it was written upon a roll of paper similar to that which was shown to me on the direct-examination, a kind of yellowish paper. It is a light paper; it is also light weight, like manifolding paper; heavy tissue paper; I have used paper on a typewriting machine suitable to make a great many copies, and it was about that texture. I have used manifold paper; how many times I have used it I could not say; I worked as a stenographer for a great many years and used it repeatedly; possibly one hundred times; I never was engaged in the policy business, so that I have used this paper in my business for newspaper work, in the typewriting where a great many copies were required to be made at one time. The word "manifold," speaking of manifold paper, means paper used in making a great many copies at the same time. It is a common word, it is

69 used in a great many ways in business. After the examination by these gentlemen that I have named of the private papers of the defendant, I am not positive by whom they were carried out to this carriage. There were two carriages at the door at that time. This occurred about half-past three or towards four o'clock. I did not time it. I am simply gauging it from the time I got down here. I got here at five o'clock; and that is the only way I have of fixing the time. I am pretty certain about the time I reached here, five o'clock. I know it was about five o'clock. Might have been slightly before or slightly after. I left the building promptly at half-past five that night. I didn't examine the contents of the box or any of the receptacles that held these papers that night. I never examined them after that.

Redirect-examination by Mr. SCHURMAN:

I didn't see Mr. Adams coming up the hallway of Pocher & Co.'s office, 40 West 34th street. I did not see him at those premises at

all; and I only visited those premises once. I didn't see Rhinders going over with Adams to 366 West 31st street before I left there. I remember that Rhinders and Hammond came into 366 together, and that after they came in there together I and Mr. Moss and the others went back with them to 40 West 34th street. And that is the only time I visited 40 West 34th street. I do not know what took place between Hammond and Rhinders and Reardon and McClellan on the occasion of their first visit there on that day.

ROBERT S. MCCLELLAN, a witness called in behalf of the People, being duly sworn, testified as follows:

Direct examination by Mr. SCHURMAN:

70 I am a county detective in the office of the district attorney of this county, and have been such since about the first of January, 1902. Prior to that I was in the employ of the Society for the Prevention of Crime. I had been in the employ of that society a year and a half. Its offices are in the Charities building, and they have been there for a long time. I mean the Charities building in this county, 22d street and Fourth avenue. On the 12th of December, 1901, I went to the premises 40 West 34th street, in this county. Mr. Rhinders, Mr. Hammond and Mr. Reardon went with me. I mean Detective-Sergeant Rhinders of the police force. The time of day when we arrived at those premises was about three o'clock in the afternoon. We entered through Pocher's office to the back office, right straight through to a door that had Mr. Adams's name on it. The door was open and we entered, and we looked around and came out again. We noticed Mr. Adams coming in the front door, and they went up to him, Hammond and Rhinders, and brought him into the back room, Mr. Adams's office; into the room at the extreme rear of the building. With windows out in the back. And the room with the name Mr. Adams on the door. In there Mr. Adams said: "I warn you not to touch anything in this place."

Q. Was he told anything about a search warrant before that?

A. Yes, and they started to read it, and he said: "I warn you not to touch anything in this office." Hammond picked up a letter-book and asked him how about this; and he did not say anything. It was a letter-book with "A. J. A." on it. People's Exhibit 5. Then they arrested Mr. Adams and left. Mr. Rhinders told Reardon and me to stay there until they came back, and they left. Reardon and I were left in charge, and we stayed there until they came back. Mr. Hammond and Mr. Rhinders and Mr. Adams left. Reardon and I were left alone. Looking at People's Exhibit A, this is 34th street. You enter here, and I remem-

71 ber coming down that hallway. I entered this office here (indicating,) the one I have described as the one with Mr. Adams's name upon the door—the one marked on the plan "Mr. Adams's private office." I remember passing through that room

which is marked "store room" on the plan. Reardon and I were left in charge of that office. The conversation that I had with Mr. Adams took place in this office marked "Adams's private office." I remember the property that was in the office at that time. It consisted of three tin boxes, a trunk, letter-books and desk, some chairs and a trash basket. These tin boxes, People's Exhibits 3, 4 and 10, and the trunk, People's Exhibit 2—those are the boxes and trunk *which I saw there.* The rolltop desk was closed when I was there. This trunk was located in the rear of the room by the windows that opened out into rear court. The trunk was locked. I was there when the lock was forced open subsequently. The tin boxes were locked, and the desk was closed. Mr. Reardon and I didn't disturb the property in any way while we were there until Rhinders came back again. When Rhinders came back Mr. Moss, Mr. Goddard, Sergeant Rhinders and Mr. Philbin's secretary came with him. Mr. Shortridge and Mr. Wells. When they came in the search warrant was read, and Mr. Reardon and Hammond were told to bust open the trunk and tin boxes and see what was in them. The trunk was opened with a crowbar. The lock was forced. The tin boxes were forced open in the same way. The desk was opened by just lifting it up. Mr. Moss and somebody else and Mr. Hammond did that. I remember seeing certain papers examined from the trunk. After their examination the papers were put back in the trunk, and the trunk was tied up there, and a cord put around it.

No papers were taken from the trunk which were not replaced there. The papers taken from the tin boxes were placed in the boxes, and the papers taken from the desk were placed in the
72 waste paper basket. They were tied up. The waste paper baskets, tin boxes and the trunk were taken out to the carriage. Mr. Philbin's secretary, I and Mr. Wells were in charge of them. They were placed in the carriage. Mr. Wells and Mr. Philbin's secretary and I went in the carriage from there to 366 West 31st street. I got out of the carriage there and stood alongside of it and watched the property there. After that the property was taken down to the district attorney's office and up to the chief clerk's office, and there it was sealed and taken down, and put in a private closet in Mr. Philbin's office, while Mr. Shortridge was there. That is true of all the boxes, and the trunk and waste paper basket. I was present when those papers were opened two days after. Mr. Shortridge was there. Mr. Philbin and Mr. O'Connor and Mr. Moss. The papers, at that time, were examined and put back again in the boxes, what came out of the boxes and into the trunk what came out of the trunk.

Cross examination by Mr. RIDGWAY:

I came in court when Mr. Shortridge was finishing up testifying. He says he went there on the 12th of December and found me in the room of Mr. Adams; that is so. I was in and out of the room.

I went in that room around three o'clock. I cannot fix it a little more precisely; we were there about half an hour. It was about from three to half-past three. When I went in I went through Pocher's office. I went right through the body of that office until I reached Mr. Adams's office; and I saw the name "Mr. Adams" in gilt letters on the door, plainly and distinctly, so everybody could see it. We passed through a room, I don't know which it was. It has been called a little storeroom, and it was after we passed through that little room that we saw the name on Mr. Adams's office. I did not notice Mr. Adams's name upon any other door there.

I am a detective. I wasn't looking around to see what I
73 could discover; that is not what I went there for. I was in that room before Mr. Shortridge came along, about half an hour or twenty minutes. I did not let Mr. Shortridge in. They all came in this room that had Mr. Adams's name on the door together. The door wasn't closed. I said I was there about half an hour before Mr. Shortridge came. The door was open, and they all came in; it was not closed. This Mr. Moss that I speak of is not a police officer, and neither is Captain Goddard. Those are not the two men, Moss and Goddard, that broke open the boxes. Mr. Hammond and Mr. Reardon broke open the boxes. I think it was Mr. Moss and Mr. Hammond lifted open the desk. I did not say Moss and Goddard took up the papers that were on the desk when it was opened and looked at them. I think Hammond picked them up and handed them to Mr. Moss and Goddard, and he passed them around. Moss and Goddard took some of them out of the desk. I saw Moss and Goddard taking some out of the tin boxes.

Q. How long were you in there prying into the affairs of this defendant?

A. Altogether about fifteen or twenty minutes.

After the desk had been opened, and the boxes opened, and then the contents of these boxes, and desk, and basket, as I have described, were all put back again then carted outside to a carriage in waiting, and subsequently they were taken down here to the district attorney's office. While I was in this place I didn't see any gambling going on of any description or nature. There was nobody in Mr. Adams's office at all when I went there. The desk was closed. The boxes were closed. And the room was vacant. And when Mr. Adams entered he entered the door leading into Pocher's real estate office from the street.

Q. And after he entered he protested against your taking any of his property or examining it, didn't he?

74 A. He said I warn you not to touch anything in this room. Mr. Rhinders started to read a search warrant out. I did not have any search warrant myself personally. And I do not know about Rhinders, except so far as his starting to read it. And he did not complete the reading of it. The Society for the Prevention of Crime. I was with that society about a year and a half. And before that I wasn't with any other society. I never was in a

society before I got in that society. Then after I left that I was county detective, district attorney's office. Then I became an officer of the Government here. I am now called a county detective. And I go out on these raids sometimes. I am not under indictment now. I am the McClellan charged with shooting the man up here. I do not know whether I did shoot him or not. I do not even know that. It was published the fact that I had shot a man. The man's name was McCoy. That I shot him in the back. That is what they said. I do not know whether I have ever been indicted for it. I have not heard of it. Nobody has disturbed me for the act I did on that occasion. And I am still drawing my salary, and engaged in the business of prosecuting people for crime.

Redirect-examination by Mr. SCHURMAN:

I saw the trunk which I have referred to and the three tin boxes in that rear office designated in this plan as Mr. Adams' private office. The trunk was located when I saw it there right under the window, left hand side as you went in. It was there when I and Reardon first went in and were left in charge of the office.

Q. Mr. Ridgway has seen fit to question you about a time when you were in trouble, and about whether you may be put on trial. I ask you if you know, or whether you do not know, that the district attorney of this county referred that matter to the attorney-
75 general of the State of New York for action on his part?

A. Yes; because the district attorney felt that as I was an employee here he ought not to take part in it. And that was done under the attorney general prior to the first of January of this year, and no action was taken by that attorney general, and no action has been taken by the new attorney general. Mr. Ridgway asked me questions about that.

SAMUEL A. TEETS, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

People's Exs. 192, 188, 189, 190 and 191 are my bills on my bill-head paper (indicating). I had a conversation with the defendant, Albert J. Adams, in reference to those bills, at No. 40 West 34th street, in his private office there. I do not recollect the date of that conversation; about two months after those bills were rendered. I had not called upon Mr. Adams at any time at 25 West 30th street, the office of Thomas & Eckerson, before that.

Mr. SCHURMAN: I now read in evidence the bills. In that connection I also read People's Ex. 51, the check we have here.

This was for work done on different premises; the premises indicated on the bill.

Cross-examination by Mr. RIDGWAY:

I am a plumber, and did some plumbing work for Mr. Adams; roofing work and furnace and range work. I sent him a bill, and he paid me the bill; and that is all there is to that.

76 WILLIAM F. BAECK, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

I am a notary public for the county of New York. I was such on the 5th of June, 1901. I know the defendant Adams. Exhibits 103 and 105, he signed those papers in my presence, as a notary public. I took these affidavits in the course of my duty down there in reference to title.

No cross examination.

ACTON C. BASSETT, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

The signatures on People's Exs. 101, 102 and 100, the endorsement "Albert J. Adams" on each, are those that I recognize made in the office. Similar to the ones Mr. Adams made in our office. I am connected with the Lawyers' Title Insurance Company; in charge of the closing department.

Mr. RIDGWAY: I make the same objection as to the testimony of the witness as confidential information, and the same exception.

The COURT: Yes.

I produced those three checks that I have last designated, under a subpœna from the files of the Lawyers' Title Insurance Company. Those checks were paid on the endorsement of Albert J. Adams.

77 These two letters, People's Exs. 106 and 107, I produced from the files of the Lawyers' Title Company. I recognize those signatures there. I recognized them heretofore, and as a communication I had from Mr. Adams on loans he was getting there. I produced them under subpœna.

Cross-examination by Mr. RIDGWAY:

The checks and the letters that I have produced relate to some loan transaction that he was transacting there. Nothing whatever to do with policy. They were checks that were drawn to our company by Mr. Adams.

By Mr. SCHURMAN:

Q. Mr. Adams never transacted any policy business openly down in the office of the Lawyers' Title Insurance Company?
A. No, sir; he did not.

Mr. RIDGWAY: He did not do it openly or otherwise.
The WITNESS: I should say not.

ERNEST G. L. WELLENKAMP, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

I am in the employ of the Hotel Savoy, and have been since 1895, as the cashier. I made out this bill, People's Exhibit M (handing paper). It is in my handwriting and made out to Mr. Al. Adams, Netherland hotel. It was made out on the day of its date I presume. I date them on the day I make them out.

78 GEORGE F. BALMER, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

I reside at 439 West 23d street. I am a contractor. I represented Mr. Adams as a sort of private secretary. I think it was in 1898, 1899 and 1900, in looking after his interests in connection with the contracting business in which his son was engaged. The name of the firm was Joseph W. Cody & Co. I have done considerable contracting work here in the city of New York during that time. In the course of my close relations with Mr. Adams I saw him write many times and acquired some familiarity with his handwriting. I have received two letters from him, and I have also seen him write checks and promissory notes. I have seen him on one or two occasions make memorandum in a book that looked something like that one, People's Exhibit 27. Looking at this letter, People's Exhibit W, already in evidence, whether I am the Mr. Balmer mentioned there, I would say that letter was delivered to me by a messenger and I assume it was meant for me. It refers to a matter in which I represented myself, and in which I had dealings with Mr. Adams indirectly. I notice the signature to that letter and the handwriting. The handwriting is that of Mr. Adams, this defendant. I have noted on this the style of "B" and the "M's" there and the "P" in that letter.

I have testified that I believe Mr. Adams wrote that letter. This exhibit is on the letter paper bearing the mark or printing of office of "Thomas & Eckerson, real estate and insurance brokers." I called upon the defendant Adams at that office, and I talked to him there quite frequently.

Q. Did you ever see Dolf Jantzen there talking to him?

Objected to; objection overruled; exception.

79 A. Yes, sir; I saw Adolph Jantzen, and he talk- when I was around. They talked right out in the general office. I never saw them go into the little room. I do not remember of any occasion in which I went out and left Jantzen there. Sometimes I left after I got through, and sometimes I remained there. My relations with Adams and his son were so intimate. People's Ex. 55, being the Birdsall letter. I think that is the same handwriting—the defendant's handwriting. I have no doubt about that. People's Ex. 51, the Teet's check. I think that is his handwriting. I have no doubt about it. On People's Ex. 101, "Pay to the order of Mary B. Benjamin, Albert J. Adams." I think the signature is Albert J. Adams's handwriting, and I think the rest of it is "Pay to the order of Mary B. Benjamin." The same as to Exhibit 102. The signature. This letter, People's Ex. 54, being the Silverstone letter. I think that is written by the defendant. I have no doubt about that. It is on Thomas & Eckerson paper, too. The signatures to People's Exhibits 103 and 105, they look like the defendant's handwriting. They look very much like Adams's. I have examined those red books, People's Exs. 29 and others in your office.

Q. And have you an opinion as to the handwriting in them, other than the paging and exhibit marks.

Objected to; objection overruled; exception.

A. In all those books I saw a great many writings there that inclined me to believe that they are the defendant's handwriting. I have not examined all the entries, but I saw sufficient there to enable me to believe that it is all in the defendant's handwriting. Adams has a relative whose initials are "W. C. A." A son whose initials are that. I know something about the Solomon Llewellyn Chambers. The Cody Company had something to do with
80 that. The Llewellyn Chambers was a corporation organized for the purpose of erecting a bachelor apartment house on West 44th street. The Cody Company made the excavation for the building. Solomon was one of the officers of the Llewellyn Chambers Company, who made the contract. I do not know whether an arrangement was made after the Cody Company was wound up, as to payments in reference to the work, as to whom they were to be made, of my knowledge. Those arrangements were made before the Cody Company was wound up.

Q. You know, though, that the Cody Company did have to do with the matter of the Llewellyn Chambers. I read from People's Ex. 24, page 107, the words "Solomon Llewellyn Chambers," with certain entries after. Look at People's Exs. 50, 60, 61, 59, 56 and 58 and tell me if your belief is that he wrote those?

Objected to; objection overruled; exception.

A. I see some words here that my conviction is that they were written by the defendant, and I see other words and figures of which I have no conviction.

Q. What are the words in reference to which you have a conviction? Take the first exhibit—People's Ex. 50. What about that "b" in "November" and the "r" there?

A. I do not know anything about the "r." The "b" is very familiar. But I do not know whether it is familiar as having seen it on here or having seen it in his handwriting. The word "inter" —evidently meant for "interest"—looks to me as though it was the defendant's writing.

Q. How about the "6's" and the "7's" on those several exhibits?

A. The "6's" and "7's" are made as I have seen him make his.

Q. How about the word "Exp." at the top there—how about the "p" in that, Exhibit 61?

81 A. Well, I have seen him make the small "p" quite frequently that way. About the word "total" also in the heading. I have seen the word "total" made that way by him. I have not seen him make the "N" in "November" like that (indicating). I never remember seeing him do any printing at all. I haven't seen him write the word "Bowery." I don't remember that I ever saw him write that word. I have seen him write words with the capital "B," and I am familiar with his capital "B." I have noted that on the exhibits you have shown me I think that "B" was written by him. On People's Exhibit 53, the figures other than the central row that are encircled and also the writing, I see one letter here that looks like the defendant's writing; it is the letter "y" in "Doyle." These figures do not look very much like his. The writing, apart from the figures, is formed very much like his, but I have a doubt about it. I am not as sure about that as some of the other matters I have testified to. People's Exhibit 45, the claim of Simpson & Company, I think that is the defendant's handwriting. The envelope, "Old Drift Wood," People's Ex. 33, in the words "Old drift wood" the letter "d" in "old" and the "d" in "wood" is finished the same way. I mean that hanging down loop. On this envelope with the words "Blank Stamps" upon it, there are some letters there that look like the defendant's. I am referring to the capital "S" and the "p" and the last "s." The capital letter "B" is not made as his are made. People's Exhibit 177; I have seen that before. I have talked to the defendant Adams about that. I do not remember where I talked to him about that paper. I made some figures upon that paper. This in writing here in ink is in my handwriting (indicating). I mean that part that is enclosed within that bracket there, the itemizing of that whole amount. I talked to this defendant about these items. On People's Ex. 48 "Sapphire"

82 the two "p's" in the middle of the word look like the defendant's writing. I think that part of it is written by the defendant. I have no opinion in regard to the rest of it at all. On People's Exhibit 32, the word "P. Law," I think the capital "P"

was written by the defendant. About the law, I could not say as to that.—That "P" reminds me of his "P's" somewhat. On People's Ex. 46 the word "Mexico," the first part of it, the "Mex" is, I believe, the defendant's writing, and I have never seen him do any lettering, the last three letters are partially printed. I think the "Mex" was done by him. I have no opinion as to who wrote that "Sapphire," that is printed, so that I would not pass upon it. On People's Ex. Ca, the words "Nov. 25 Ex." there in blue pencil, I have no opinion in regard to that; not with the exception of the letter "x." As to the letter "x" I have a very faint impression that it might be the defendant's handwriting. The "25" is printed. The "5" of the "25" looks quite similar to 5's that I have seen him make. It is a capital "X." The "x's" that I refer to, as in the word "Mexico," was a small "x." Where I did was the "x" in "Mexico." That was in Exhibit 61—I think I said the "p" there was like his. I do not think I said anything about the "x." As to the "xp" in Exhibit 25, I have an opinion that the "x" is in the defendant's handwriting. On People's Exhibit Da, the words "Nov. 20" in blue pencil, at the foot of the sheet, I have no opinion as to who wrote that, because this is printing. About the figures. That "2" and the "0," I do not see anything peculiar about them that would impress me that it was his or anybody else's handwriting. I have no opinion about them, and my opinion isn't changed in the last few days. I saw you mark a "B" on some of them; I know you put it on some of them for that purpose. As to People's Ex. 143a—the "November" there, I think that is the defendant's—that is written. I can recognize the writing, not
83 the printing, and that 15a, I think is his. On Exhibit 11a, the "Nov. 25," I think the "25" there is in defendant's writing. The "November" is printed. I have seen the defendant make a great many figures.

Cross examination by Mr. RIDGWAY:

I am a contractor doing excavations and foundations, and have been in that business about six or seven years. I represented Mr. Adams's interest in the business of Cody & Co., which was composed of Walter C. Adams and Joseph W. Cody. Mr. Adams was interested in that concern; their business was that of excavations alone. I do not know what these figures relate to on the papers handed me, but that sheet looks like the sheet we used at the Windsor hotel on the pay-roll for paying the men. When it says "45, 1-30," on Exhibit 53 I do not know anything about what these figures indicate at all. The columns are not headed. The one on the right is evidently money. It has the appearance of the slips that were used in the pay-roll in that hotel, very much so. At the ruins of the Windsor hotel, we recovered all the bodies and valuables that were there and tore down the old walls, etc. General wrecking work for the building department, and Mr. Adams furnished all the money

for that purpose. Sheets were used exactly like those, and we footed out the amounts similar to these.

Redirect examination by Mr. SCHURMAN:

I notice on this People's Ex. 53 a lot of numbers and some words. I think the word Stanley is there. We had men working there that wore numbers on their clothes, all of them wore numbers. I have not designated some of them as "Lon." I have not testified that that is a pay-roll. Whether we had anybody up there that
84 we designated by the name of "Snore" on our works, I do not know anything about these names, we had two or three thousand men working there. We were working there from the 17th of March, 1899, for three weeks. This slip of paper is headed "March," and then over the top of it is "1900." I would not know what the "1900" up there indicated, not positively.

HARRY P. WHITTAKER, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct examination by Mr. SCHURMAN:

I reside at the Hotel Netherlands in the winter. I am the proprietor of the hotel. On People's Ex. T for identification, that is my signature. After I signed that paper I gave it to one of the clerks for delivery to Mr. Adams, this defendant.

This defendant leased from me certain rooms in the Hotel Netherlands, numbered as the lease called for and this is the lease (indicating).

Cross-examination by Mr. RIDGWAY:

He lived in the rooms. I do not know of any policy game being conducted there. I think I would know it if there was.

By Mr. SCHURMAN:

He never played policy or had these messengers running with manifold books to him to the Hotel Netherlands. I never saw him. The Hotel Netherlands is a quiet hotel. It is not like downtown hotels.

Mr. Schurman offers in evidence People's Exhibit T for identification found in the tin box.

Marked "Ex. T" in evidence.

Objected to; objection overruled; exception.

85 EDWARD J. REARDON, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct examination by Mr. SCHURMAN:

I am one of the county detectives in the office of the district attorney of this county. I have been in that position since the 2d of January, 1902, or thereabouts. Prior to that I was employed by the Anti Policy Society of the City of New York for about six months. I played in the game of policy in more than one shop in the city and county of New York. I have played in a large number of places. I am familiar with the method of conducting the business of a lottery policy shop. A person entering a policy shop for the purpose of placing a bet on a game of policy proceeds to the desk where a writer will be found. Usually in front of the writer will be found a sheet of zinc. On the top of that sheet there would be a manifold book consisting of three sheets of heavy tissue paper with three carbon sheets between, so that copies could be made on the three sheets. And a copy could be made of a paper that would be placed under the sheet, between the zinc sheet and the book proper. A person wanting to bet would call off a series of numbers—say, for instance, g-i-g, a series of three numbers; 4-11-44—you can get 4-11-44 for five cents. Then the writer would record 4-11-44 on the book with a stylos. Before recording the bet on the book he would place a small piece of paper under the book, about the size of a visiting card. That would be placed under the book. The writer would then record 4-11-44 on the book and those numbers would also appear on the piece of paper. That piece of paper would be delivered to the person betting, who would pay five cents. It would take place in the morning drawing, for instance. At 2:30 in the afternoon a person having bet in the morning would return to the shop and would show what is known as a policy slip—

86 that is a piece of paper containing two rows of numbers, twelve numbers on each row, or twenty-four numbers, which would show the numbers drawn in the game of policy for that drawing on which he had bet. If 4 11 44 appeared on the other side of the slip he would collect $5. If not, why he lost. The same would apply to the afternoon or evening drawing, only that the person betting would enter the shop at 7:15 or 7:30 in the evening and receive what is known as a policy slip on the night drawing. That would contain two rows of numbers of thirteen each, or twenty-six numbers, and if he had won he would get 87½ cents on the dollar. There being two more numbers on the night drawing. That manifold book consisted of three heavy tissue paper sheets and three carbon sheets used for carbon. I said that if you bet on the 4-11-44 that that book writer would write those numbers on the manifold. And if you wrote anything else he would mark a g-i-g or dollar mark and write alongside of it showing the place. While I was with that society it was my business to go around and investigate suspi-

cious places, and if I found that policy was being played there, I made a play to secure evidence of the violation of the policy law.

Exhibit 12 came from the roll in the trunk found in the room of Mr. Adams at 40 West 34th street with the name of Mr. Adams on the door.

Q. Do you know what that paper is?

A. Yes.

Q. What is it?

A. A manifold sheet used for the purpose of recording bets in the game of policy.

Mr. RIDGWAY: Objected to as there is no evidence that it was ever used in the game of policy.

Objection overruled; exception.

On "People's Ex. 12" the words "P. M." "November 25, B 66th street," "P. M." means the night drawing; that the book was
87 used on the 25th of November for the purpose of recording bets in that afternoon. 66th street shows that the book came from a shop on 66th street. Taking the first column here with a series of three numbers under one another and nothing following the three until you come to the 11th series, which is 8, 18, 70, the stroke thing followed by a "5" shows that this series of numbers were played for five cents apiece, bets in that game of policy. And that on that bet the last series bet on was 8-18-70. The series 12, 19, 51, with that stroke a 20 following, shows that 20 cents was bet on those numbers. The meaning of that stroke is the gig, or dollar mark. In that next column a series of several three numbers, and finally one 10, 25, 73, with that mark of 2½, means that would show that these numbers were bet for 2½ cents on each gig—that is, each series of three numbers.

Q. Over in the next column I notice a solitary No. 109?

A. That means ten gigs—that is, four numbers. It is what is known as playing it on a horse that is four numbers—a different kind of bet. On the next column a series of three figures with that same gig mark and the three following shows that that series of numbers have been played for three cents. In other words, that some players stepped up and paid three cents, and some two and a half cents on each game. That one it was three cents. The book-keeper, when he is making up a manifold book, has the three sheets of paper like these pinned together, which make a book that has carbon sheets between. And he figures in column after column with the figures of those men that gave in the cash. And after he fills that sheet in, if business is brisk, he opens another book; so that business for the morning, if good, may consist of several of these. Each player gets a card about the size of a visiting card, and the numbers are impressed on that, too. I remember going to 40 West 34th on the 12th of December, 1901. About three
88 o'clock in the afternoon of December 12th, 1901, in company with George P. Hammond, Jr., deputy superintendent of the

Parkhurst society, and Agent McLellan and William Rhynders, the sergeant of police, I entered the premises 40 West 34th street, a step or two inside the hall. Entered the general office, which I understood to be used for real estate purposes; the name "Pocher" on the window. I remained at the door a moment or two while Rhynders and Hammond and McLellan went into the rear. I saw them enter the room with the name "Mr. Adams" on the door. Just put their heads inside of the door and went out. At that time Adams entered the general office of Pocher & Co. As he passed me I raised my hand to Rhynders and Hammond. Rhynders had a warrant for the defendant's arrest, and they stepped up to the defendant, and they said, "We have a warrant for your arrest." The defendant said, "All right." They stepped into the back office with the name of "Adams" on the door. There Mr. Rhynders told the defendant that he had a search warrant for the place. The defendant said he did not own anything there, and warned them not to touch any of them. Hammond put his hand over to the top of a roll-top desk and took a letter-book with the letters "A. J. A." on the cover. He said, "How about this?" The defendant said nothing. Rhynders turned to me and asked me to remain with McLellan, and not to allow any one to enter until he returned, and started off to 366 West 31st street. That is "People's Ex. 5," the letter-book which Hammond picked up at the time. McLellan and I remained at the direction of Rhynders in charge of the office; another man also remained there, a man named Breen, who accompanied the party from 366 West 31st street to 40 West 34th street. Looking at People's Ex. A, this plan, I say, this is the office where the defendant was first spoken to (indicating), which he entered, where he was in-
89 formed that there was a warrant for his arrest. I am now pointing to the hallway there (indicating), the general office. Then we went to this room where the words, "Mr. Adams's private office," were. I have testified that a certain door had the name Mr. Adams on it. That door is about here (indicating). I am pointing to the partition adjoining the office of Mr. Adams, the last room in the rear. There were two windows in that room, opening up in the back. I remember passing through that room that is marked here "storeroom;" there was a partition there. I don't know whether there was anything on the door there (indicating). I could not say whether there was a door there. I could not say whether there was an opening there or not. There was a large roll-top desk, a desk chair, a wardrobe; three tin boxes marked "A. J. A.," "No. 1, No. 2 and No. 3." And there was a large trunk. There was a hat-box also in the room. This trunk, People's Exhibit 2, and the tin boxes, Exhibits 3, 4 and 10, are the trunk and tin boxes I referred to. Mr. McLellan and I didn't do anything to the tin boxes, the trunk and the desk, or any of the property, while he and I were there in charge of them, and this other man Breen didn't. Hammond and Rhynders were away, I should judge, about twenty or twenty-five minutes before they returned. During that time McLellan and I

remained outside of the door with the name of Mr. Adams on it. During all that time there were a number of people in the outer office of Pocher & Co. Breen was around there, too; he is a newspaper man. Hammond and Rhynders returned with Samuel Shortridge, then an assistant in the office of the district attorney, Mr. Moss, Captain Goddard, Isidor Wells and, I think, one or two reporters. When they returned the search warrant was read, and after it was read the tin boxes marked "A. J. A. 1, 2 and 3" were smashed open. The trunk was smashed open and the desk was opened and the contents were looked over.

90 Certain papers were taken from the desk and placed in a waste paper basket and were tied up there. All of the papers that were taken from the desk were placed in that waste paper basket.

Q. How did you open the trunk?

A. Smashed it open with a small crowbar. It was found to be locked.

Q. What was done with the papers that were found there?

A. Left there. One of the rolls of manifold books were opened, and after seeing what were the contents the trunk was closed again and the rope was placed over it.

Q. What was done with the contents of the manifold books?

A. Left where they were. A rope placed over the three boxes and placed in the carriage and removed to the office of the district attorney of this county. I remember their being put in that cab. Robert S. McLellan, Isidor Wells and Samuel Shortridge, and I think Rhynders went with them. I next saw the papers at the office of the district attorney of this county, Mr. Philbin, at the time, two days after that. On the 14th of December they were opened. I was present when the seals were broken. The seals were intact before being broken. The contents of these several boxes, etc., were examined. The contents were replaced; the boxes, &c., resealed, and placed in the safe of the chief clerk's office. The contents of the waste paper basket was resealed the same way. Mr. Keyrain J. O'Connor was there at the time in charge. It was in Mr. Philbin's private office it took place. Mr. Shortridge was there at that time. I have examined the contents of these various rolls from the trunk, which have been offered in evidence, under their various exhibit numbers, and marked for identification. My marks were put on at the same time that Hammond's were put on in the presence of Mr. Lord.

Q. Do you know what the contents of these rolls are (indicating)?

91 Mr. RIDGWAY: Objected to as they speak for themselves. For the purpose of expediting the matter I might make this concession, that this witness will identify each paper that Mr. Hammond identified because he said he was present and marked the same rolls.

The COURT: Yes.

I have examined the contents of that roll, Exhibit 11.

Q. What does it consist of?

A. Manifold books for the purpose of recording bets in carrying on the game of policy.

Mr. RIDGWAY: I object to that.

The COURT: If he is able to say that these sheets are used in any particular class of business.

Objected to; exception.

They are manifold sheets and books for the purpose of recording bets in carrying on the game of policy. I have examined the contents of each of the other rolls that are here in the trunk. They consist of manifold sheets and books used for the purpose of recording bets for the purpose of carrying on the game of policy. I recognize Exhibit 11 as one of the papers that was found in the trunk at that time. Exhibit 45 was found in the trunk at 40 West 34th street. Mexico envelope, People's Ex. 46, was found in the same place. People's Exhibit 48 was found in the trunk in 40 West 34th street. P. Law, People's Ex. 32, was found in the trunk in 40 West 34th street. The Driftwood envelope, Exhibit 33; was found in the same place. I could not say as to where the blank stamped envelope enclosed was found. After looking at these initials (indicating) I say it was found in an envelope marked "Old Driftwood" at 40 West 34th street. My initials are on these papers, Savoy bill, People's Ex. M, was found in an envelope marked "Old
92 Driftwood," in the trunk at 40 West 34th street. There was only one envelope marked Old Driftwood. Exhibit 174 was found in the trunk at 40 West 34th street. This paper was found in an envelope marked "Old Driftwood" in a trunk at 40 West 34th street.

Paper marked "Ex. X."

People's Ex. 47 was found in the trunk at 40 West 34th street. The papers in that envelope came from (examining papers) that trunk at 40 West 34th street. People's Ex, 142-A, 144*a*, 146*a*, 11*a*, C*a*, and 143*a*, came from the trunk in 40 West 34th street, part of covering for the rolls.

Offered in evidence here under the same numbers.

People's Ex. D*a*. that came from the trunk in 40 West 34th street, and is part covering of one of those rolls. I do not recall whether the letters "A. J. A." with the blue marks over it were on it at the time it was found in the trunk. I recognize those books, they were taken from the desk in the room marked "Mr. Adams" in 40 West 34th street.

Mr. SCHURMAN: Now then, I will take the concession as to all the other papers that he has not identified.

(It is conceded that this witness will swear as to the papers which

were identified by Mr. Hammond and which Mr. Hammond testified had been initialed both by him and this witness, and that they were taken from the trunk.)

Cross-examination by Mr. RIDGWAY:

I belonged to one of those societies in this city that has been alluded to. I was an employee of one of them. I was paid.
93 The name of my society is the Anti-Policy Society, located at office of the counsel, 52 Broadway. The name of the counsel is Charles P. Blaney. That was the office of the counsel and the society too, and the lawyer and I met there at times. I did not go in any other society but that. I never joined any other. I was a member of that society when I embarked on this enterprise that I have testified to. Mr. Blaney was not at 34th street. He was at 366 West 31st street. He was in the neighborhood within call. We reached this place in West 34th street about three o'clock in the afternoon. Hammond, Rhynders, McLellan, Breen were with me at that time when I reached there. No one else. Not at the time I reached there.

Q. Did I understand you to say on your direct-examination that you went into this place with "Mr. Adams" on the door with Mr. McLellan?

A. Yes, sir; we two were not alone. Rhynders, Hammond and Breen were with us. They left McLellan and me alone there then after they had taken the defendant to 366 West 31st street. And the desks had not been broken at the time. These other people, the secretary to Judge Beekman and the deputy assistant district attorney, were not there when Rhynders left McLellan and me there. Mr. Adams was not there; he was in custody.

Q. And there was nobody representing him there?

A. Oh, yes; there were quite a number there.

Q. In this little room?

A. They tried to get in there.

Q. In the little room?

A. No; not in the little room.

It was, I should judge, about 20 or 25 minutes before the rest of our party came back to this little room.

Q. Do you remember some suggestion being made—did you read in the papers that some property that you had not accounted for had been taken?

A. I did not read anything about my returning the prop-
94 erty. The property was in the office of the district attorney.

Q. Did you read that some of the property, or property, had been taken from there that has never yet turned up?

A. I heard a statement to that effect, which was false—wholly false.

Q. Never turned up, like the vase at Canfield's?

A. No; because it was not there. I, with others, looked through the place to see what was there.

Q. When you were there alone and had an opportunity of securing it, did not you see it was there?

A. No; I did not. I heard Mr. Adams say there that he protested and warned them against touching any property. He said he did not own anything there, and he warned them not to touch it. I heard him warn them. It was about 25 minutes after that protest and warning that his private boxes were broken into; and the trunk was broken into after that, and his desk opened, and all these papers, these private bills and letters, and everything that have been exhibited publicly to this jury, were taken out by some of our party there and looked at. After they finished reading them they put them in the basket receptacle and removed them. I have looked at the piece of tissue paper, People's Ex. 12, and say that was found in one of the places there—the trunk or some place. I told the jury that that was a manifold sheet of policy game.

Q. What is that number "109" on there, whereabouts is that?

A, I do not think there is a number "109."

I did not call out some number like that. The numbers run from 1 to 78. What Mr. Schurman called my attention to and I said that it represented an aggregation of numbers I think is the series in the first column. There were a number of them. I think
95 there were eleven series of numbers. There was 27, 29, 38 for 3. I fail to find a single number there.

Q. Do you remember Mr. Schurman saying to you that there was a single number and not three distinct numbers?

A. No, I do not think there was a single number on the sheet. That is 8, 10, 44, 19, 76.

Q. I call your attention to that 109?

A. It is not 109. It is ten gigs that means—10 G.

I see that number opposite which you have placed the pin there. It is 10 G. It is not 109. The highest number in policy is 78. I did not see this paper written. I do not know by whom it was written. It was written on a particular date. I know that of my own experience.

Q. And that is all you know it by, as a policy player? And you know it also, you say, from your experience as a policy gambler?

A. Not as a gambler.

Q. Did not you say you gambled?

A. I said I secured evidence.

Q. Did not you say to Mr. Schurman that you played policy?

A. Yes, sir; played policy a great many times at a great many different places. When I left this place I went to 366 West 31st street. From there I went to the office of the district attorney of this county. This was on the 12th of December, and on the 2d of January, following, I was appointed by the district attorney. I am now a public officer of the city and county of New York.

By Mr. SCHURMAN:

This piece of paper here, Exhibit 12, where the pin is stuck in is the entry that Mr. Ridgway has been asking me about. That forms part of the play called "horse." It is a part of the preceding bet. 10g means 10 gig. That is not 109. I explained it
96 as 10 gigs the moment you showed it to me. Playing it in horse those are marked as 10 gigs, and that is the way they are marked by the writer. When you play on horse you play four numbers instead of three, but there are different marks as to the game. You can take ten numbers and play them too. I have seen sheet writers in shops writing those sheets, hundreds of them. I have noticed the date at the top of the sheet, and I have seen the numbers which he put at the top of the sheet on that day that he was writing, the date. That was the date of the day that I was making my bet.

KEYRAIN J. O'CONNOR, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

I am a member of the district attorney's staff and have been for eight years. I am deputy assistant district attorney. I held that position under Mr. Philbin, Col. Fellows and Col. Gardiner. I remember being placed in charge of the papers that were taken from 40 West 34th street, claimed as the office of Mr. Adams. I was present a couple of days after that time in Mr. Philbin's office when they were opened. I remember that there was a trunk and three tin boxes and a waste paper basket Exhibit 2 and these tin boxes are the boxes and trunk. They were under seal at the time. I was made responsible for them by my chief at the time. They were opened in my presence. The papers that were in them were kept in them by me so long as I had the custody of the papers. They were kept in that box and the trunk and placed in a closet which adjoins the district attorney's private office and a special lock put on it and the keys put in my custody and one in the possession of the
97 district attorney himself. They were under seal. So that they could not be broken without the seals being broken. I was present when they were re-opened after Mr. Lord came to the office and Mr. Jerome was in charge of the office. The papers were in the same receptacles and in the same condition when I turned them over to Mr. Lord as they were on the first day after the seizure.

FRANK A. LORD, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

I am a deputy assistant district attorney. I was placed in charge of these papers by Mr. Jerome. I remember when the trunk and three tin boxes and the waste paper basket were opened in the presence of Mr. O'Connor when I took charge of them on the 11th of January, 1902. Soon after that I had the papers in the trunk marked by Mr. Hammond and Mr. Reardon, and the same thing was done by these men with reference to the papers in the tin box and the waste paper basket for the purpose of identification during the trial. Up to the time of their being marked I kept them in their several receptacles just exactly as I received them from Mr. O'Connor. As far as I know there has been offered in evidence everything that was received by me in those receptacles. The roll which I have in my hand is the roll from which People's Ex. Da was taken, part of the wrapper. And the roll I hold in my hand was marked Exhibit D. I have compared the parts of that roll with People's Ex. 53.

Q. Have you found any similarity in figures or words between the two?

Mr. RIDGWAY: Objected to as he is not an expert; he has not been qualified.

98 Mr. SCHURMAN: We do not call him as an expert at all.

The COURT: Objection overruled.

Exception.

Q. Open the rolls now and show to the court and to the jury any particulars in which you found a resemblance between the two?

A. I made comparison and found certain features of resemblance between People's Ex. 53 and Exhibit D, and I then made a memorandum, but I am not able, without refreshing my memory offhand, to state what the resemblances were. I have the memorandum in my hand.

Q. Take the first item now and state the resemblance which you have in mind.

Objected to; objection overruled; exception:

A. I took certain of these sheets of tissue paper in People's Ex. D and I notice that the headings of the various papers correspond, to a certain extent, with some of the names which are written on People's Ex. 53.

The COURT: Show to what extent.

Q. Yes.

A. I found at the head of one of the rolls the No. 24 at the right hand corner; and I find in the left-hand column of Exhibit 53 the number 24. I find at the top of one of those sheets the word "Lon."

And I find at the top of this column of Exhibit 53 the same word. I find on one of the sheet books of tissue paper in People's Ex. D No. 25 at the top. I find the number "25" at the top. I find the number "25" in this column of People's Ex. 53. I find on another of those sheets at the top right-hand column the number "28." I find the number "28" in the left-hand column of Exhibit 53.

99 I find the number "57" on the right-hand upper corner of these sheets. I find that number at the left-hand column of Exhibit 53. The number "155" is at the right-hand corner of one of those sheets. And I find that number on the left-hand column of People's Ex. 53. I find the word "Jake" at the upper right-hand corner of one of those sheets. And I find the word "Jake" at page 27 of the September, 1901, red book. That is People's Exhibit 27. I find on the right-hand upper corner of another of those sheets the word "Bill." And in the left-hand column of People's Ex. 53 I also find the word "Bill." I find the number "30" at the head of one of the sheets and the same number on Exhibit 53. I find the word "snore" at the upper-right hand corner of several of these sheets. And I find the word "snore" in the left-hand column of Exhibit 53. And I find the word "Park" at the upper right-hand corner of one or more of these sheets. And I find the word "Park" in the left-hand column of Exhibit 53. I find the word "Mack" at the upper right-hand corner of one or more of those sheets and I find that word in the left hand column of Exhibit 53. And to expedite matters a little I may say that on the upper right-hand corner of one or more of those sheets the numbers 31, 471, and 41 appear. And I find those numbers respectively written in the left-hand column of People's Ex. 53. I find on one or more of those sheets on the upper right hand corner the word "Perry." And I find that also on People's Exhibit 53. I find also in the upper right-hand corner the word "Eig," and I find in the red book of June, 1901, Exhibit 24, on pages 25 and 27, the word "Eig." And on the same page of the October red book of 1901, the same pages, I find the word "Eig." On the upper right-hand corner of one of those sheets or more, I find the word "Stanley" written.

100 And on the upper left-hand column of Exhibit 53 I find the word "Stanley" written. All of those sheets which I hold in my hand and with which I have made comparison tally with some characteristics, words or numbers in the left-hand column of People's Ex. 53, with the exception of two, which I have indicated, tally with two of the red books. These sheets I myself took out of a roll marked November 20, which had been offered in evidence and of which it has been sworn by the witness Hammond was found in the trunk at 40 West 34th street. That roll from which these papers come is marked "F 6" with my initials. A portion of the wrapper in which this roll is wrapped is also marked "F 6" with my initials has been offered in evidence—one of those frame wrappers, and has been presented to you, gentlemen.

Q. Those marks there are yours (indicating)?

A. Yes, sir. This People's Exhibit 53 to which I have referred, which has been sworn — by the witness Harmond and, I believe, the witness Reardon, came from one of the tin boxes in the rear room of 40 West 34th street.

The COURT: There are a large number of entries on there which you have not identified with anything on the roll?

The WITNESS: Yes, sir.

Q. Did you go through the entire roll?

A. I did not. I took as many as I had then time to examine and made those notes.

The COURT: And of that part of the roll you took for examination you found a corresponding entry either on that entry or one of the books?

The WITNESS: Yes, sir.

Cross-examination by Mr. RIDGWAY:

I am in the district attorney's office. I am admitted to the bar.

Q. Do you take part in raids, too?

101 A. Do you mean is it my custom?

Q. Yes.

A. No; I have been in them, not only as a recreation or the duty I owe to the people. When I have been told to do it I have done it. I was up to Canfield's and other places, and I have heard it stated sometimes that when the raids have been made that property has been taken that has not been turned in. I made this comparison that I have detailed with such accuracy to the jury. I think it was within four days. I cannot name the dates, Mr. Adams's office was raided almost two years ago; it has been testified to. I don't know that. I was not there. I was here at the last trial. I did my work as well as I knew how. I did not say four days ago. I said within four days. I did not devote Easter to such work as that. I think it was Monday, but I am not certain. I started in on Monday to prepare this schedule after the case was on the calendar. I told the jury all the numbers and words that I found in the red book. Whenever I found numbers and words in the red book, and I chanced to find those numbers and words on some piece of *of* tissue paper, I called the attention of the jury to it. I had a whole trunk full of rolls here. There might have been fifteen or twenty sheets from one roll, which I explained to the jury. I laid them on the table there. One roll—these (indicating). If I found "56" in a certain place on one of the tissue papers I would call their attention to it. I told the jury that I found a number, indicating that number, in the upper right-hand corner of this tissue paper. Then I told them where I found it in this paper, Exhibit 53; and there are a great many figures on this paper, Exhibit 53, and a great many figures on the tissue paper.

Q. You did not tell them in fairness to the defendant, "I found a great many figures that I did not find in the books or the other papers?

A. I was not asked. It is not so, that if there was anything
102 that was favorable to the accused I would not state it. I took an oath when I went into office. It is my duty, as I conceive it, to prepare evidence here sufficient to sustain the indictment, and not to withhold anything. I think undoubtedly that there is a higher rule—a rule of common fairness between man and man, by which if I saw a wrong being done a fellow-man that I ought to make it known. I do not believe it is my duty to try both sides of one case at a time. I did not say that is my duty or my obligation as a district attorney.

By the COURT:

I came into the district attorney's office on the 1st of January, 1902, and I have been engaged in assisting the district attorney in one other prosecution of this same indictment.

Q. Did you find in your examination of these yellow slips of paper, and the comparison with the other exhibits, any information which, in your judgment, would be beneficial to the defendant, which you have suppressed?

A. No, sir.

Mr. RIDGWAY: I object to that as that is a matter of argument. I asked him whether he had stated any of the figures on the paper which did not appear on the other paper?

The COURT: You get your exception.

By Mr. SCHURMAN:

Q. Where did you take the numbers from which you have read to the jury as showing a certain correspondence between that roll?

Mr. RIDGWAY: I object to that as not part of his redirect-examination.

Objection overruled; exception.

103 I have one of the manifold sheets to which I have referred in my direct examination—the one which I have here (indicating)—the upper right hand corner the word "Jake." Others have on upper right hand corner the word "Bill" on two of them. The upper right hand corner of 33. I find here (indicating) the upper right-hand corner "28." There are seven of them. The correspondence which I have particularly explained to the jury in those sheets is the same kind of correspondence as I found in the sheets I have in my hand.

FREDERICK N. GODDARD, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

I am a member of the firm of J. W. Goddard & Sons. The business of that firm is importing and commission dry goods. I am also connected with the Anti-Policy Society of New York. I do not remember going to the premises 40 West 34th street, in this city and county, on the 12th of December, 1901, with Mr. Rhynders, and some other men. I remember going to the rear office in that suite with the name of Mr. Adams on the door, and I remember that there were windows looking out in the rear court of that room, and there was a roll-top desk there. I remember seeing there that day a trunk like that and like these tin boxes; that the trunk was locked and the tin box was locked when I came there, and they were, under the search warrant, opened at that time; also that the papers taken from the desk were put in the waste paper basket and tied up, and the papers from the trunk were left in that trunk, and the papers from the tin boxes were left in the tin boxes, and Mr. Shortridge, Mr. Philbin's secretary, was placed in charge.

104 ISIDOR WELS, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

I went to 40 West 34th street on the 12th of December, 1901. I remember that the trunk taken from there with the three tin boxes were found in the rear office with the name of "Mr. Adams" on the door. That was the office indicated on People's Exhibit A, and indicated on this Exhibit A as Mr. Adams's private office, and in that office there was a roll-top desk and chairs; windows looking out; I do not know whether it was into the court or not. There were windows there. I accompanied Mr. Shortridge with the trunk and tin boxes, etc., from that office, and went down to the district attorney's office with them, and I remained with them in the district attorney's office until they were sealed up.

CHARLES SMITH, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

I work at the Hartford Fire Insurance Company. I will be 17 years old November 5th. I attended public school in New York. I worked for Pocher & Co., at 40 West 34th street. I worked for them before that in Lexington avenue. I remember about November 1st, 1901, moving from Lexington avenue to 40 West 34th

street. Dayton Searles and I were office boys there, and Pocher & Co. had a number of men in their employ there, about ten or eleven men. There was a stenographer, Miss Butler, there, too. I saw a trunk something like People's Exhibit 2 in Mr. Adams's room. Carr and I took the trunk upstairs from Mr. Adams's room at
105 40 West 34th street to some vacant floor—second or third floor. Nobody told me. I do not know what directions Carr received. We simply cleaned it out up there. At that time there were a lot of vouchers in it. I mean papers folded together with a band around them like that (indicating). There weren't in it, at that time, any rolls like People's Exhibit 46, that I remember. I did not see any tissue papers like that with a lot of numbers on them that I remember. I saw the papers that were taken out. The trunk was dusty at that time; cockroaches in it. I cleaned it out and shut it and took it downstairs and put back in Mr. Adams's room. Mr. Adams was there then. I think he said "Thank you" to Carr. And then we put it in the left-hand corner near the window, I think. Looking at Exhibit A, I placed the trunk as indicated on this plan, about here (indicating). Not under the vault light. There is a high wall to the back there (indicating). There is a glass roof overhead there (indicating). That is his private office (indicating). In passing to there I went through a supply room. I remember Mr. Adams's name being on the door of Mr. Adams's office. There was a name on the place called the supply or storeroom. It was "Mr. Adams." And that door (indicating) swung back; and when that was swung open then this door (indicating) would open into it. I saw no other papers in that office. I saw tin boxes in there and written on the tin boxes was "A. J. A., No. 1 and No. 2." I don't remember anything about a third tin box. I don't know anything about that. There might not have been another without my remembering. Not as far as I know. The trunk was placed by Carr and me in reference to Pocher's office, opposite Mr. Adams's desk—right against the partition. I never saw the trunk open again. There wasn't anybody in the office of Mr. Adams at the time Carr and I brought that in except Mr. Adams. I have seen
106 Mr. Adams use the roll-top desk in that office. I never saw anybody else use it. Adams I saw use it maybe every day. I delivered mail to him every day. I handed them to him if he was there, and if not put them in the slide in that desk. There was a desk chair there. Mr. Adams occupied that. I saw Mr. Pocher in there at the time Mr. Adams was there. I never saw Mr. Pocher writing at that desk. I saw him reading there. I remember this letter-book (indicating there). I do not remember seeing Dayton put the initials on it. I saw him copy letters there. He got them from Mr. Adams's desk. Mr. Adams was in there at his desk on some of those occasions. People frequently called there to see Mr. Adams. I have noticed them going into that office and there conversing with him. I ran some errands for Mr. Adams to the post office and to the tailor.

Cross-examination by Mr. RIDGWAY:

We moved down from Lexington avenue to 34th street some time in November, and this raid took place in December; it was really less than a month. Mr. Pocher was there about two weeks—a week before Mr. Adams came. I did not know what Mr. Adams was interested in. I say I have seen people in the room with Mr. Adams; I did not see people signing papers there in his room. Carr asked me to take the trunk into Mr. Adams's room; I cannot remember what month it was; I remember that we only moved there in November, and that on the 12th of December this raid was made, so that it was some time between the time we moved in there and the raid. About a month after we moved in there the raiders came. I didn't take this trunk in Mr. Adams's room; we cleaned out the trunk about a week after Mr. Adams came—that was about three weeks after we cleaned the trunk that the man came in and arrested Adams; then we had been there two weeks, I think. We went there in November only. When I cleaned the trunk Mr. Adams may have been a week or more there—I don't know—and
107 when I cleaned the trunk out there was nothing in it but vouchers. There were none of these rolls that Mr. Schurman referred to. I shut the lid of the trunk and brought it down to Mr. Adams's room, and that is all I know about it. There were a number of people working in this real estate office who occupied desks there and were paid by Mr. Pocher, and I was paid by Mr. Pocher and had nothing whatever to do with Mr. Adams.

FREDERICK SILVERSTONE, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct-examination by Mr. SCHURMAN:

I am a lawyer. My place of business is No. 102 Fulton street. I had business dealings with the defendant Adams in reference to a mortgage. I received that letter (People's Exhibit 54) from him in the course of my dealings with him. And I produced that letter, to the district attorney under a subpœna for the purpose.

No cross examination.

DAVID N. CARVALHO, called as a witness in behalf of the People, being duly sworn, testified as follows:

Direct examination by Mr. SCHURMAN:

I reside in the borough of Queens, county of New York. My business is that of examiner of questioned handwriting, inks and paper. I have been engaged in that business twenty-seven years. In the course of my profession and business I have been called as

an expert in handwriting in many hundreds of cases. I
108 have been called by Mr. Ridgway frequently when he was district attorney for the county of Kings. People's Ex. 51, People's Ex. 54, the Silverstone letter, People's Ex. W, the Balmer letter, People's Ex. 55, the Birdsall letter. I have examined these and studied them and also People's Ex. 100, being one of the Lawyers' Title Company return checks; People's Ex. 102, another of the same, and People's Ex. 101, another of the same. I have studied the endorsements on those, "Albert J. Adams."

Mr. SCHURMAN: I propose to use those as standards.

Also People's Exs. 103 and 105, being the affidavits signed as testified to by Mr. Baeck, as notary public, in his presence. I have examined the signature to these affidavits.

Mr. SCHURMAN: I shall use those as standards.

Also People's Exs. 50, 60, 61, 59, 56, 58, which have been referred to by Mr. Steel and Mr. Balmer. I have examined the handwriting on them. Also People's Ex. 29, page 114 only, and I have examined the writing on that page and made a study of it.

Mr. SCHURMAN: I ask you to regard that as a standard.

Also page 4 of the Brewery Book, People's Ex. 30. I have made a study of that.

Mr. SCHURMAN: You will regard those separate pages as standards also.

I have examined the writing in the two books that you have just designated, and which I have in my hands, other than the pages which you have designated as standards.

109 Q. Do you find those writings (indicating) in the other two books to be in the same handwriting as that of the person who wrote the standards?

Mr. RIDGWAY: I object to the testimony of Mr. Carvalho as being an expert, on the ground that the question, as now so far presented, does not present any conflict in the writing, and, therefore, the testimony of the expert is not admissible. In orther words, in order to make the testimony of an expert admissible, either an expert in handwriting, or an expert upon any other question, it becomes admissible under the decisions only where there is a conflict, where the conflict has been presented. And so far the proof in this case don't present any conflict.

The COURT: I think all that is necessary is that there should be a disputed handwriting. Whereas, in a case of this kind, the prosecution are bound to prove every element of the case, there are no pleadings defining the issue they are bound to assume that everything necessary to be proven is a disputed fact. And if it be necessary to prove handwriting that that handwriting is a disputed fact.

Obviously, they cannot wait until the defendant disputes that because at that time the People's case is over and they are limited to rebuttal.

Mr. RIDGWAY: I can understand where the accused person was charged with procuring money from a bank on a forged check, that being the most essential ingredient for the prosecution to establish his guilt, they would have to prove forgery, and it may be necessary for the expert to go on the stand and prove that the signature of the person was not the signature of the person it purported to be. That would be the essential ingredient. But in this case it is not
110 so, and, therefore, I wish to avail myself of the objection.

The COURT: I will overrule the objection.

Exception to defendant.

The other pages of the two books, in my opinion, were written by the same person who wrote the so-called standrards, "People's Ex. 24, 28, 27 and 26—those books. I have compared them with the standards (handing papers). I have an opinion as to whether or not the handwriting is in the same handwriting as the standards. It is, in my opinion, written by the same person who wrote the standards. Exhibit 45. I have compared the handwriting McLain, Simpson & Co. of the year 1900. In my opinion it is in the same handwriting as the handwriting of the standards. On People's Ex. 32, this envelope "P. Law," I am of opinion that the blue pencil writing is of the same handwriting as the standard. That is the blue pencil, "P. Law." I mean just the "P. Law" there. I mean, considering the exhibits marks down there (indicating). Exhibit 48. I have compared the word "Sapphire" on that envelope with the handwriting in the standards. I have compared the "S" of "Sapphire" with the "S" of "Silverstone" in the Silverstone letter, and the "p" in that with the "p" in "Sapphire." I am of the opinion as to there being in the same handwriting, and I think they are. Exhibit 46. I have compared the word "Mexico," as written on that, with the standards. I think they are in the same handwriting—written by the same party. The "M" at the top of Mr. Balmer's letter, I have compared the "M" of "May" in the Balmer letter with the "M" in the Exhibit 46, with that and other "M's," and I think they are in the same handwriting. People's Ex. 33, the upper "M" in "May." I have compared the words "Old Driftwood." I think the words "Old Driftwood"
111 are in the same handwriting as the standards which I have in my possession. I have compared the finish of the "d" in "old" and the last "d" in "driftwood" with the "and" in the check, People's Ex. 51. I find the same finish there, substantially, and I think they are in the same handwriting. People's Ex. 34, the words "blank stamps" written upon that envelope have been compared by me with standards. I think they are in the same handwriting. I find the "s" of "stamps" and "p" in "stamps," written in the same way as the same letters in the

standards. People's Ex. 40 is in the same handwriting as the standards, also Ex. 49 the address "Daniel Griffin." I think that is in the same handwriting—the ink writing, and also Exhibit 36, the doctor's name there; also Exhibit 43 is in the same handwriting; also Ex. 38. I think that is in the same handwriting. Also Ex. 37, People's Exhibits 42, 44, are in the same handwriting. I have carefully compared, before going on the stand, these little exhibits that I have referred to now, and they are all marked by me. They have my initials so that I could identify them as the exhibits by which I reached this conclusion.

Mr. SCHURMAN: I offer in evidence now six slips of paper which are marked in this envelope People's Ex. B for identification, which were not read in evidence before.

Mr. RIDGWAY: I object to it on all the grounds that I have heretofore stated and urged against the admission of similar testimony.

Objection overruled; exception.

Marked "Ex's B and B 1" of this date.

On People's Ex. 47 I have seen the word "Baker" before, it is written by the writer of the standards, in my opinion. On People's Ex. 62 for identification; as to who wrote that writing, McLain, Simpson & Co. I have an opinion. I believe the writer of the
112 standards did, on People's Ex. 70; the handwriting on that is in my opinion the handwriting of the writer of the standards; also People's Ex. 68. The November book, People's Ex. 29, page 114—that page which is a standard—now show me People's Ex. 143*a*, particularly the Nov. 15, written in script on that page. I have compared that with the standards to which my attention has been called, and also with the others. I have an opinion as to that. I think that is writing written by the writer of the standards. People's Ex. 61, one of those that are pinned together—that "ex" there, and also People's Ex. 50, that "Nov."—in connection with them I look at People's Ex. C*a* to the Nov. 25 "Ex" in blue pencil. I say I have an opinion as to the handwriting of the latter. I think that the latter exhibit, is in the same handwriting as the standards. On comparing the "ex" I find not exact similarity but the same habit of making the letters. People's Ex. 144*a*, the blue pencil, "Nov. 14, night," I have compared that with the standards. I have an opinion that is in the same handwriting as the standards. I have compared the "n" of "night" with page 4 of the Brewery Book, People's Ex. 30, the way that "n" is made, and the way the "n" is made in the standards down here, and from a comparison with that and the other standards I have reached my opinion. On 146*a* I have compared "Nov." there with the standards. I think it is in the same handwriting as the standards. People's Ex. 11*a*, I think that is in the same handwriting as the standards; also People's Ex. 142*a*, the "Nov. 13," I think it is. People's Exhibit 53, I have compared that with the standards, and I think it is in the same handwriting as the standards.

Cross-examination by Mr. RIDGWAY:

113 I am here as an expert. I was employed by the district attorney in this case. I receive compensation. I first examined these papers March a year ago. I testified about a year ago in this court room against this defendant when he was on trial under this indictment. I have testified a great many times in courts of justice. Sometimes I have testified to signatures upon wills being genuine, and other times that they were forgeries, and sometimes, perhaps, I have been mistaken in my judgment. Perhaps so. I do not believe that the human mind is infallible on these subjects. I surely am not. People are liable to make mistakes in their judgment in handwriting as in all other human affairs. We are all human. I suppose I have made mistakes. I do not testify except under oath, if that is what you mean. If I have made any mistakes, certainly it has been while I was under oath, if that is what you mean. But I presume I have been mistaken. I only recall one case where I believe that I was mistaken. I know a great many other experts in handwriting.

Q. And you know that mistakes are made by them and they are not uncommon.

A. Well, both sides cannot be right. It is so—one man swearing a will was a forgery and another man swearing it was genuine, they both cannot be right. There was a man arrested charged with writing a criminal libel published in a newspaper, and about the so-called Morey letter. A letter was published that purported to have been written by the Hon. James A. Garfield, who was then a candidate for the office of President of the United States, and that letter was commonly known throughout the world as the Morey letter, which was the Chinese letter, and it purported to be signed by James A. Garfield, and that letter was published and being used to his detriment in that campaign. After his election I testified in respect to the Morey letter—three days after he was elected.

114 Substantially I testified that that writing was written by James A. Garfield. The Morey letter was handed to me to examine for the first time. I examined the newspaper cut and formulated my opinion from that. The cut, I thought I had examined with care. I believed I was right. I swore that the letter, in my judgment, was written by James A. Garfield. That is substantially what I testified. I ascertained afterwards that President Garfield never wrote that letter at all. That is my honest belief, and to-day that he never wrote the letter is my honest belief.

By Mr. SCHURMAN:

That was nearly twenty-three years ago. I have been employed by Mr. Ridgway since that time. Mr. Ridgway had nothing whatever to do with that case. He had nothing to do with the Garfield case. I do not recall what case you ever used me in, but I testified for your office or yourself eight times. It is a fact that when I was

put on the stand, twenty-three years ago, on that Garfield case, that I never saw the original letter until it was handed to me on the witness chair. That is right. And I want to say further, that when I found that I had been mistaken, that I wrote to Mr. Garfield and frankly told him so. And the investigations that took place afterwards were made by me without charge to him and the true person found that forged that letter. That is the work I did in reference to that. And instead of being anything I may criticise myself about, it is the proudest thing in my career.

GEORGE P. HAMMOND, JR., recalled, testified as follows:

By Mr. SCHURMAN:

When I identified People's Ex. Da the letters "A. J." with
115 the blue pencil marks through them were on that paper at the time it was found in the trunk; I mean the "A. J." was there just as it is there now; it was in the trunk on the 14th of December with the pencil marks through it. People's Ex. 84 was found in the desk of Mr. Adams's private office at 40 West 34th street, the office designated in the plan as his office.

Mr. SCHURMAN: It is already marked People's Ex. 84.
Same objection; same ruling; exception.

This roll, People's Ex. 143, is a roll I have looked through this morning; I have replaced there all the manifold sheets that were in it that were found there in the trunk.

People rest.

Defendant's Evidence.

EVERETT M. SEIXAS, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. RIDGWAY:

My name is Everett M. Seixas; I live at No. 322 West 138th street; I am engaged in the real estate business; on the 12th of December, 1901, I was engaged in the real estate business at No. 40 West 34th street, the place spoken of here as Pocher & Co.; I was manager there. I have been with Mr. Pocher since May 5th, 1898. The firm of Pocher went into this place in 40 West 34th street November 1st, 1901. I have seen this diagram of the premises. The business carried on in the premises shown on that diagram was real estate business. There were about eight employees there on the
116 12th of December, 1901. That condition existed from the time we went into that building. We took as many as that in there with us when we went to do business there. I do not believe there was any addition. This cashier's desk that is repre-

sented near the front entrance was used for our bookkeeper. He used it for different bookkeeping he had to do, for the collecting of rents, etc. I know Mr. Adams. Mr. Adams used to use this room here (indicating). The one that is marked on the diagram "Mr. Adams' private office." That room he used. I simply know that he went in there. I have seen him sitting there. I saw him writing—talking there. I have seen Mr. Pocher in there. I have been in there myself. I have seen other attaches of this place of Pocher & Co. in there. We used that room to close deals. Real estate deals. We used this room if we could (indicating). If this was occupied we went in there. How often we would use that room I do not know. I was in there every day. There wasn't any gambling game of any nature or character carried on in those premises. I see a room marked here "storeroom." In going to Mr. Adams's room you go through that storeroom. There was another way of getting there through this office here (indicating), and then in there and then to this office (indicating. This trunk that has been shown here. I do not remember seeing that trunk. I would not know that trunk. I saw a box that might be called a trunk. I do not remember whether it had the appearance of this trunk. I saw that in the storeroom. On any of my visits into Mr. Adams's room the trunk that is now before me and marked in evidence in this case I do not remember ever having seen it in the room where Mr. Adams's desk was. I remember the day called the "raid day" there, when the officers came in there. I was in the room called Mr. Adams's room that day, in the morning. I have not any idea now about what
117 time. I may have been in there after that. I do not remember. I always went in there in the morning. I go through there to the office when I go in. I did not see this trunk in that office that morning. That diagram correctly represents the conditions of that office from the time that I went there up to the raid day. That is, with those various desks, maproom and supplies, and all other articles that are designated upon it. Leading into this storeroom from Pocher & Co.'s there was a door. The name of Mr. Adams was on that door at one time. That was when he started in the office. It remained on that door quite a long time, until the glass was broken. On the day of this raid, I believe, his name was upon that door. I believe so. I am not positive. I don't know. There is another door leading from the storeroom into what is called Mr. Adams's private room. The name was on that door—"Mr. Adams"—and is there now. Speaking of the other door I entered before I reached that door at all, my memory is not clear as to whether his name was on that door that day.

Cross-examination by Mr. SCHURMAN:

I am in that office of Mr. Adams every morning. I have stated that I do not remember of ever seeing in the premises there of Pocher & Co. or in office of Adams any trunk like Exhibit 2. I

think I did say that I saw at one time in that storeroom a kind of box. It might be called a trunk. I know the difference now between a trunk and an ordinary box. I ought to. I think I do. I should call that Exhibit 2 a trunk. The thing which I saw in the storeroom might have been a trunk. It might have been. I do not know. I would call it a box. I did not inspect it. "Q. Do you remember seeing in Mr. Adams' office on various occasions these tin boxes marked A. J. A. Nos. 1, 2 & 3? A." I do not remember any numbers. I saw some tin boxes in the office. I remember I did see some tin boxes. I was in the habit of going in there each day merely to see if every thing was all right—I went in there as
118 I came in. This was a real estate office and when I came there in the morning I went through to see if everything was all right. And that was a casual walking through. That is all. When I wanted to speak privately to any one I would go there. When Mr. Adams was occupying it I would not go in. If Mr. Adams was there in his own office I would not take any of my real estate customers and close deals with them. When I was there I never opened the roll-top desk there. I have seen Mr. Adams sitting at that desk and writing, frequently. I have seen people talking to him when he was sitting there. I have seen other people sitting at the desk and writing. I have seen people sitting at the desk there. I mean with the roll-top down. I have seen them sitting at the desk and writing at the side, but never with the top open. I remember of testifying before the grand jury. I do not remember that I said that. I never saw any tin boxes there at that time. I do not remember saying substantially that I did not remember of ever seeing any tin boxes in that office.

Q. Don't you remember that at that time I exhibited to you certain tin boxes?

A. You showed me some tin boxes.

Q. You remember also being asked before the grand jury, "You do not know that you ever have? A. I do not remember any such trunk." Do you remember seeing a trunk like this exhibited to you at that time?

A. I do.

Q. Do you remember being asked this question at that time, "Did you ever see a trunk up at Pocher & Co.'s"?

A. Not that I remember.

Q. You remember that. That is what you say to-day, as I understand you?

A. I do not remember of ever having seen any such trunk.

R. You remember also saying, "Now, is that the kind of box which you saw," and I showed you that trunk, and your
119 answering, "I don't remember"?

A. I may have said that. I don't remember being asked this question before the grand jury by you: "Q. Now, have you ever been in this office which Mr. Adams occupied with Pocher & Co.? A. Yes. Q. Frequently? A. No." I don't remember these ques-

tions and answers, but I may have made them. If they are there I must have made them. I was through the office every day. It was my place to go through there and see the office every morning. Very often. That is frequently. I don't remember telling the grand jury that I was not in the office very frequently.

Q. Do you remember being asked this question before the grand jury: "Did you ever see any tin boxes in there," referring to the room? "A. I may have. I don't remember." Do you remember that answer?

A. Well, I do not remember the question and answer; it is a long time ago. If I made that answer it was correct to the best of my knowledge. I have given it more thought since. I was called upon to testify before the grand jury shortly after Mr. Adams's arrest. At times I think of things. Dayton F. Searles and Charley Smith were office boys there. Pocher & Company had about eight employees there. Counting me.

Redirect examination by Mr. RIDGWAY:

I was there the day of the raid. I endeavored to go into this place marked "Mr. Adams's private office" while the people were there. Why, at the time of the raid I was sitting in Mr. Pocher's office with a party referring to a deal, and I heard some noise outside and it got a little bit louder, and I questioned what it was. I saw some men go into the office to the side of us and in the telephone booth and the storeroom. And I got up, and I said I would not have such a noise. And some one said it was none of my business. So I went to the door that leads from Pocher's office to the other private office and I was stopped from going in there. And I said I had a right to go in there and I wanted to know what right they had in there. And they said they would show me what right. I says, "I want to know where your authority is to go through here." And they shut me up and they said they would arrest me if I did not stop fooling with them, or something to that effect. And I said I wanted to see this warrant. They said, "We will show you by arresting you." And they followed and closed the door. And I had no more access to the room. I went around to the other side and I met with the same result—I could not get in. And I did not go into the office until they left, which was sometime afterwards.

By Mr. SCHURMAN:

There was a number of people in the room at that time. I do not know what they took out. I was there. I went out sometime in the afternoon after that. I was there. I may have been called out for something after that time. I was very anxious when I saw a number of men in the private office of Adams. I wanted to meet some other people of higher authority. They went back and forth all the time. I do not remember seeing a trunk like Exhibit 2

except when you showed it to me before. I do not think I noticed them carrying out that trunk that day. I do not think so. I was there but a short time after that. I do not remember if I was there when the officers left there finally. We were in and out all the time. I remember I was in Mr. Pocher's office when they did come in. And when I tried to get into the other office it was impossible to get in because I was kept out. They were in and out all the time. I could not see how many men left. There were five or six came there all together.

121 Q. Were you present when the several men all left?

A. I went out for a short time and left the office in charge of some other people that were there. I do not remember what was taken out of the office that day.

ERNEST COLLYER, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. RIDGWAY:

My full name is Ernest Collyer. I live in New York city, in 83d street. My business is real estate broker. I have been in that business since 1891. I know Pocher & Co. I was connected with them on the 12th of December, 1901. I was not there the day of this raid. I was there from about the first of November. The clerks and employees there were seven or eight. This diagram which is shown me, People's Ex. A, correctly represents the premises on the 12th of December, 1901. All these desks and chairs and implements of furniture, etc., were situated there as they are shown on this diagram at that time. I do not mean that the chairs were in the exact position they appear there but the number of chairs. They were there on the day of this raid. I saw this room that is marked Mr. Adams's private room. I had occasion to go in that room prior to the 12th of December, 1901, several times, to transact business with different clients that came into the office; clients that came there to see Pocher & Co. I did not use some other part of the office, because sometimes Mr. Pocher was busy in his own office; in his own private office, and I took them then in this office. At the time I went in there Mr. Adams was not in the office. I presume I

122 went in there once a day, or something like that. I never saw this trunk in that room marked on the diagram Mr. Adams's private office. I was not there at the time of the raid. I was there that day. I was in there in the morning, if I remember right, about nine o'clock. I did not see that trunk in there in that office that morning about nine o'clock. There wasn't any gambling game of any kind; lottery, policy or any other gambling game at any time carried on in those premises, to my knowledge. I never heard of it or saw it, or any evidence of it whatever, so far as I could see.

Cross-examination by Mr. SCHURMAN:

I say that I was in that office of Albert J. Adams on the morning of December 12th. I went in that office that morning. I just went back there, walked around, and came back again. I was not inspecting the office. I am not a manager who goes around walking through the offices in the morning. I did not go in there for any business that morning. I mean to say that I now remember that I did go into that office that morning, and that I did not go there for any particular business. I do remember it. I remember saying to Mr. Ridgway, "Yes, I was in there that morning, if I remember right." I am sure now, because certain things came to my mind since. I went into the office, and went right to the back part of the office. I went to raise the shades and the windows. I am sure of that. It was not my business to raise the shades and windows, but I like fresh air. I was with Mr. Pocher & Co. at that time. My desk was located the second one from the rear, in the front office. That there (indicating). So that between me and the fresh air windows there was a partition bounding the map-room and the store-room and the partition bounding Pocher's office from Adams's office. There was a fan-light in the doors; but the partition runs to the top. I remember now that on the
123 12th of December 1901, at about 9:30 in the morning, I felt the need of air and went in there. I testified before the grand jury. On the occasions that I went into Mr. Adams's office I went in when the office was vacant. I have seen Mr. Adams occupy the office frequently. I have seen many people call upon him there and interview him upon matters about which I knew nothing. The firm of Pocher & Co. was engaged in the real estate business. I do not know what took place in the office of Mr. Adams behind glass doors there. I know that he had callers there about one o'clock and six o'clock every day. I know that those were the particular times of day when Mr. Adams came there. I do not remember seeing these tin boxes in Mr. Adams' office. So far as I know the trunk and tin boxes may have been in the office that morning and I did not notice them—the tin boxes; but there was no trunk. The tin boxes may have been there without my noticing them. I was not going round in those offices looking for trunks. When I was there with people I was there attending to business for them. When I went in there casually I merely passed through the office. In other words, I did not attempt, prior to the 12th of December, 1901, to remember in any way the particular articles that might be in Mr. Adams's office or Mr. Pocher's office.

HARRY FURST, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. RIDGWAY:

I live at 965 Third avenue. My business is real estate. I have been in that business since November, 1900. I was in the employ of Pocher & Co. all the time. I went with that firm before
124 they went to 34th street, and I went with them to 34th street. I am with them yet. I remember the day of the raid. I remember the circumstance. I was out collecting that day. Rent collecting. I saw nothing at all of this raid. I was at the office every day, some part of every day. My duty was to go and collect the rents. On the diagram shown me I see the office marked on that diagram called Mr. Adams's private office. I went into that office to bring mail in and things of that sort. I do not imagine I went in there more than five times prior to the raid. Pocher & Co. went in there November 1st, I believe, 1901. I never saw the trunk that is here in Mr. Adams's office at any time while I was there. There was absolutely no gambling game carried on in those premises. There were other employees there besides myself. The two last witnesses were there as employees.

Cross-examination by Mr. SCHURMAN:

I say I was in Mr. Adams's office prior to the time when the officers came there; approximately, five times. I went there just to bring mail in. Once I went through it when we first came down, and I had the curiosity to go through all the offices. When I first came down, whether the partitions were up back there or not is more than I recollect. I don't remember that that was all one office in the rear—that the two offices that subsequently became Mr. Pocher's and Mr. Adams's were all in one office at that time. A couple of days after we moved down I went through to see what they were like. I could not tell the other instances, but I went four or five times before the officers came, and at those times I walked all through the offices. To bring mail in, you have to go all through there. I remember of handing mail to Mr. Adams; if he was there I handed it to him. I had to do something with it. I remember bringing it to the office. After I brought it I either handed it to Mr. Adams or put it on his desk. And the sole
125 object I had in going to the office on these occasions was to deliver the mail or whatever it was to him. I delivered it and immediately came out again. I never went in there for any other purpose that I recollect. On the occasions I went in there I was not looking for trunks, but I think I would have seen one if it was there. I had no thought of a trunk in my mind when I entered, or no thought of noting the articles that might be there. I remember of testifying before the grand jury. I talked to you up-

stairs when you asked me the questions. Before the grand jury is the only place where you asked me anything. That was after Mr. Adams's arrest. I suppose these questions were put to me:

"Q. Used you to see Mr. Adams at his office, 40 West 34th street, every day?

"A. Well, not every day. I am not there during the day.

"Q. Well, you have seen him nearly every day you have been there?

"A. Well, nearly every time.

"Q. What office does he occupy?

"A. In the rear, right next to Mr. Pocher.

"Q. Next to Mr. Pocher. Is that the office with the name of Mr. Adams on the door?

"A. Yes, sir.

"Q. Have you ever been inside that office?

"A. About twice.

"Q. When were you there in that office?

"A. Last?

"Q. Yes.

"A. About three days ago I handed him a letter.

"Q. Were you in there just before that?

"A. Well, it is pretty hard to say. I only know I have been there——

"Q. Were you ever in there prior to December last?

"A. I could not say positive."

I do not remember making these answers at that time. If
126 I did make those answers at that time I suppose they were true. I do not remember this further question:

"Q. Well you have been, have not you?

"A. I have got no business in there.

"Q. No, but you go in there once in a while?

"A. I say I may have been in there, but I would not swear that I have."

I do not remember those questions and answers.

JOHN T. CUFF, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. RIDGWAY:

I live at 385 Park avenue; my business or calling in life is that of a detective sergeant. I have been connected with the police department thirty years. I was attached to the district attorney's office for about seven years; I ceased to be there on the 8th of this month; I am retired from the department. I remember the time of the raid at 40 West 34th street. The first place we went to was 366 West 31st street. I was an officer attached to the party that went there; I didn't go to 40 West 34th street.

Q. Was there any search warrant for searching the premises of 40 West 34th street?

Mr. SCHURMAN: I object to that question. How is it material? He has already stated that he is not one of the men who went to 34th street.

Mr. RIDGWAY: Where is the search warrant?

Mr. SCHURMAN: That is what I would like to know.

Mr. RIDGWAY: And where is the officer that executed it?

Mr. SCHURMAN: The paper has disappeared.

127 Q. After this raid were you asked to make a return upon a search warrant, as if it had been executed, when no such search warrant had been executed? Were you asked to make a return on a search warrant to make it appear that it had been executed at 40 West 34th street when there was no such search warrant?

Objected to; objection sustained; exception.

Q. Were you asked after the 12th of December to make a return upon the back of a search warrant purporting to show that a search warrant had been properly issued, and that it had been executed at 40 West 34th street when no such warrant was in existence at the time of the raid?

Objected to; objection sustained; exception.

Defendant rests.
Evidence closed.

128 *Charge of Court.*

GENTLEMEN OF THE JURY: You have the great advantage in this case of having had it presented to you by able and experienced counsel, who have left nothing undone which could be done to place the facts fairly before you, and who have presented those facts to you with great skill and care. It will not be necessary, therefore, for me to refer to or comment upon the evidence any further than I may find it desirable to do so, in order to illustrate and expound the principles of law which are applicable to the case, and by which your deliberations will be guided.

Of course I cannot charge you upon a case of this kind without making some reference to the evidence and to the facts which are claimed to be elicited thereby. But I want to say to you, at the very outset, that you are, under the law, the sole judges of every question of fact which is involved in this trial. I have neither the right nor the desire to influence you in your determination as to the question of fact in the very slightest degree. And if it should chance that by any inadvertent remark of mine, or by anything that I may say during the course of my charge, or may have said during the course of the trial, you or any of you shall have deemed that you have gained an impression as to any views of mine upon any question of fact, I desire you to disabuse your minds of that al-

together and to allow it to have no influence upon your deliberations.

On the other hand, it is your duty to accept from me the statement of the law which applies to this case. The division of duties in our criminal courts is so distributed between the jury and the judge that, while it is the function and right and duty of the jury to pass upon questions of fact, it is equally their duty to accept from the court the statements of the principles of law which are applicable to these facts.

129 Under the beneficient system of criminal law which has from the very beginning been in vogue in this State, a defendant charged with a crime comes before the jury with a presumption of innocence in his favor.

Neither the fact that he has been indicted by the grand jury, nor the fact that the prosecuting officer of the county asks for his conviction, nor the fact that a charge is made against him, raises any presumption whatever as to his guilt. He is presumed and understood to be innocent until his guilt has been proven to the satisfaction of the jury which is called to pass upon the complaint against him. And that presumption attaches to the defendant throughout the whole course of the trial until at the end of the trial—if that be the case—his guilt has been established to the satisfaction of the jury.

That, as you will see, casts upon the People the burden of proving the crime for which the defendant is arraigned and each and every element which goes to make up that crime. A defendant is not called upon to defend himself either by his own testimony or by the testimony of any other witnesses until the People have established by their testimony the fact of his guilt.

As you are doubtless aware, the law of this State—being therein a departure from the common law as it existed years ago—permits a defendant, at his own option, to go upon the stand and testify in his own behalf, but that is purely a personal privilege which belongs to him. Nobody can compel him to testify, and the law expressly and explicitly provides that no prejudice shall come to him, that no presumption shall be indulged in against him if he does not see fit to avail himself of that privilege. And you will not, therefore, allow yourselves to be prejudiced against this defendant owing to the fact that he has not offered himself as a witness in his own behalf.

130 You should also be careful in your consideration of this case to consider it and to determine it only upon the evidence which has been produced before you. There have been references—perhaps it is inevitable in a case of this kind—there have been references by counsel on both sides in their summing up to you in the course of the trial, to matters upon which no evidence has been submitted to you. Something has been said to you by the district attorney which indicated that he felt, or claimed, or charged, that this defendant was in somewise connected as a principal with the

general playing of the game of policy throughout the city. Of that there is no evidence in the case. There is no evidence in the case as to his connection with the game of policy excepting the evidence which has been laid before you, and which consists of those rolls of tissue paper which have been testified to by some of the witnesses. And whatever you may find as to his connection with the game of policy, whatever you may find as to his guilt of the offence wherewith he is charged, you must find upon the evidence which has been submitted here before you, and your finding must be one which can properly be deduced from that evidence. You are not to allow yourselves to be influenced by any general impression which you may have, or by anything that you may have heard outside of this court room, or by anything that may have been said to you not covered by the evidence.

In the same way there have been certain hints and insinuations thrown out by counsel for defendant which pointed to the possibility that at the time of the raid, as it has been called, was made upon the office said to have been occupied by the defendant, there were taken away certain valuable papers which have not been accounted for. There is no shadow of evidence of that kind in the case. There is not even a charge in the case by any person that there was in that room anything valuable or not valuable
131 which was taken away, and which has not been accounted for. And you will, of course, not permit yourselves to be influenced by any mere insinuation of that character, unsupported by either charge or evidence and based, only upon a cross-examination of one or two of the witnesses.

So also as to what was said to you concerning alleged illegality of the seizure of these papers. It has been said to you that this was entirely without warrant of law; that there was no search warrant, and that the persons who descended upon this office were little better than burglars. There is no evidence in the case that there was no search warrant. On the contrary, the evidence, uncontradicted, so far as I recall, and unchallenged when offered, of some of the officers who participated in that raid, is that there was a search warrant at that time, and that it was either exhibited or read to the defendant, and elicited from him the warning that the papers in the room did not belong to himself. There is no evidence that any search has been made in the proper office to find that search warrant and its return, and that the search warrant and its return are missing. And, in fact, there is no evidence in the case, other than that to which I have referred, upon which can be based any finding that this seizure of papers was made without authority of a search warrant. And then much has been said to you as to the impropriety of seizing a man's private papers and using them as evidence against him. That is a question with which you have nothing to do. It may be that there is a legal question as to the use of these papers in evidence. If there be any question at all, it is only a

legal question, and that question of law has been decided by the court adversely to the defendant.

It is your duty to accept and weigh and to consider each piece of evidence which has been admitted by the court. You are bound to assume that it is legal evidence, and you are bound to
132 give it such weight as in your judgment it is entitled to. You have no right to go back upon the determination of the court upon the admissibility of such evidence, and reject it or refuse to consider it because you do not think that the court was right in admitting it.

Now, having spoken to you as to these general considerations relating to the case, I may call your attention to the particular charge against this defendant. The charge is based upon sections of the Penal Code which have been enacted expressly with a view to reaching this particular form of gambling of which the defendant is accused of being a participant.

The constitution of this State, the fundamental law of this State, has imposed upon the legislature the duty of passing statutes to prohibit this particular form of gambling among other forms of gambling. And the legislature has adopted respecting this particular method of gambling provisions more stringent in some respects than those which apply to any other form of gambling in this State. And it is under those stringent provisions of law that this indictment has been brought. It contains two counts, and those two counts are based upon two provisions of the same section of the Penal Code.

It is charged as a crime against the prisoner that he had knowingly in his possession a certain writing, paper and document representing and being a record of a chance, share and interest in numbers sold in what is commonly called policy, which said writing, paper and document is as follows, that is to say, manifold books and sheets, being records of numbers sold and lottery policies sold, commonly known as a manifold book. That, as you will see, as was urged upon you by the counsel for defendant, appears to contemplate the possession by the defendant of slips or sheets or manifold books which have been used in playing the game of policy,
133 sheets or slips which have actually at the time they have been presented to the jury been used for playing that game.

The indictment, however, contains another count, also founded upon the same section of the Penal Code, which charges the defendant with knowingly having in his possession a paper, print, writing, numbers, device, policy slip and articles of a kind such as are commonly used in carrying on, promoting and playing the game commonly called policy, which said paper, print, writing, numbers, device, policy slip and articles aforesaid, is as follows: a manifold book and sheets, being records of numbers sold and lottery policies sold, and commonly called manifold books and policy slips, being numbers alleged to have been drawn and policy lists, being alleged

records of alleged drawings, more particular description thereof is to the grand jury unknown.

Now, the district attorney, in order to sustain that charge against the defendant, and to bring him within the purview of the statute, has presented to you certain rolls of tissue paper said to have been produced by the manifolding process which he claims are the instruments for playing the game of policy, the possession of which in the hands of the defendant is by law made a crime.

Now, you have had described to you, by two witnesses who claim to have had personal experience of the manner in which this game of policy is played, the method in which the game is generally played; and they have told you that when a person desiring to gamble in the game goes to a shop where such things are carried on, that the keeper of the shop, the person backing the game, as it is said, writes down upon manifold sheets by means of carbon—alternate sheets—the numbers which this person plays or bets on. And each of these witnesses has said that these yellow slips which have been produced before you here in court are sheets representing the game of policy as played in the manner they have indicated.

134 Now, the disstrict attorney has not traced those sheets to any particular office or place where the play has been made. And it is not necessary for him to have done so if upon all the testimony you are satisfied that those rolls and sheets were papers used in the playing of this game of policy. Upon that question, which is the first question to be determined by you in this case, and upon which this whole prosecution rests, you are to bring to bear your common sense and general knowledge of affairs. You are not to allow yourselves upon that or any other question to be led off into the realms of mere guessing and speculation, but you are to determine it as reasonable men acquainted with the affairs of life and able to draw just deductions from established facts. If you believe that these rolls and sheets of paper were sheets used in playing the game of policy, then one step will have been made toward proving the crime against this defendant and that the first step which has to be made.

It has been said to you, and it is probably within your knowledge and observation, that the use of manifolding by means of alternate layers of carbon paper and tissue paper is by no means confined to playing the game of policy, but that it is used in a great variety of legitimate and proper methods of carrying on various commercial enterprises. That is undoubtedly true, and that is a fact that you are to take into consideration in determining whether or not these particular papers are papers thus used in playing the game of policy. The fact that other persons in other occupations use this system of manifolding for legitimate purposes has no special bearing, one way or the other, upon the character of these particular papers. It is for you to determine on all the evidence that you have heard, and giving it a weight and consideration, whether those papers have been used in playing this game of policy.

But the statute requires not only that the person who has
135 these policy slips or manifold sheets shall be found, but that they shall be found in the possession of the defendant. And the next question for you to determine will be, if you find that those were policy slips, whether or not they were found in the possession of the defendant.

In order to establish this contention that they were found in the defendant's possession, the district attorney has introduced before you evidence respecting the place where they were found, and he has shown you by his witnesses, if you believe them, that these rolls of tissue paper were found in a trunk in a room in the back part of the offices of the firm of Pocher & Co., a room upon the door of which was the name of the defendant, and a room which, as the witnesses have told you, was generally used by him as his private office. And the district attorney has also presented to you a large number of other papers and documents not said to be in anywise connected with the game of policy, but some of which were found in the same trunk with these rolls of tissue papers, others of which were found in the desk and in tin boxes in the same room which he has striven to identify, and claims that he has identified, as being the property of this defendant. And his argument to you is that if this defendant has this private office, and had in it this trunk and these tin boxes and this desk, and that in this trunk and these tin boxes and this desk there was found a great number of papers of various kinds and descriptions, the ownership of which he has traced to the defendant, that it is a fair and reasonable inference for you to draw that these bundles of yellow tissue paper which were found in that same trunk were also in the possession and under the control of the defendant.

Of course you will understand that when a man is charged with having documents of that character in his possession it is not necessary, in order to establish the charge, that the people should show
136 that they were actually taken from his person, because if they are in any receptacle or desk or safe or box over which he exercised the exclusive domination, they are as much in his possession as if they were actually in his power. And the district attorney has contended before you that the evidence of the nature I have specified which he has produced here, and all the evidence as to the occupancy of this office by the defendant, shows conclusively that these papers were in his possession, which is made to be a crime by the statute as if they were knowingly in his possession. And that is the next point to which your attention should be called if, on the other points of the case, you agree with the district attorney.

If they were policy slips, and if they were in the possession of the defendant, were they knowingly in his possession? That is to say, did he know that these papers were manifold sheets or policy slips, and did he know that they were in his possession? The district attorney has called your attention to certain writing upon the outside of some of these sheets of the wrappers, of some of these rolls,

of paper, and he has produced evidence before you, evidence of an expert, for the purpose of convincing you, and the expert has so testified, that this writing upon the outside of some of these rolls at least was in the handwriting of the defendant, which, if you believe it, of course, would be a circumstance which you would be entitled to take into consideration in determining whether he knew he had them and if he had them whether he knew what they were.

As to the testimony of that expert, you will understand that expert opinion upon the subject of handwriting does not profess to be, and is not, the expression of a fact in the sense of that of an eye-witness who testifies to what he has seen, but is the expression of an opinion by a person who has trained himself to so testify by special care and study. And it is to be received and considered by you as opinion evidence, and given such weight as you deem it should be given in view of the testimony which you have
137 heard as to the experience of that expert and his general accuracy in making deductions from known formulas.

Now, the statute under which this indictment is brought contains another section which has a bearing upon the knowledge of the defendant, or rather which has a bearing upon the evidence as to the knowledge of the defendant. It provides that the possession by any person other than a public officer of any writing, paper or document representing, or being a record of any chance, share, &c., to be drawn in what is commonly called policy, is presumptive evidence of possession thereof knowingly and in violation of the provisions of section 344a of the Penal Code, which is the section under which this indictment is found. In applying that statute which says that mere possession shall be presumptive evidence of knowledge, it is necessary that you should apply it with some care and caution. The legislature undoubtedly has the right within the limits of the constitutional restriction, to establish rules of evidence in criminal causes, as well as in civil causes, and it has the right to say that certain facts shall be deemed presumptive of other facts; providing, they do not, therefore, infringe upon that constitutional right which each defendant has, that his guilt shall be proven by fair and legal evidence. If you find, however, that these papers which are charged against the defendant as having been policy slips, were policy papers, used in playing the game of policy, that they were in his possession, that he was in such a position as to know the character of the papers, then the law authorizes you, under this section, to presume that they were knowingly in his possession. But it is only after the fact that they were policy slips, and the fact of their character has been established to your satisfaction, that you would be entitled to apply the provision of this sec-
138 tion which says that that possession shall be presumptive evidence that they were knowingly in his possession.

Now, as I have said to you, I need not go through all the evidence in this case. It has been exhaustedly summed up to you by counsel on both sides. All I have to say to you is that if you find, upon

the whole evidence, that these papers charged against the defendant as illegal papers to have in his possession, were papers which had been used in playing the game of policy, that they were in his possession, that they were knowingly in his possession, then he has been guilty of the offence which is charged against him in the indictment. In determining that question, as I have said to you, you are to exercise your judgment and your common sense.

You have been specially selected, because you are presumed to have been possessed of good judgment, common sense, of fairness both towards the People and to the defendant. If, upon the evidence, you are satisfied beyond a reasonable doubt that the defendant is guilty of the crime wherewith he is charged, it will be your duty to render a verdict in accordance with that conviction.

If, on the other hand, as to this crime you entertain upon the whole evidence any reasonable doubt, it is the defendant's constitutional privilege to reap the benefit of that doubt. When I say that he is entitled to a reasonable doubt, you will understand me to say precisely what those words mean. The doubt to which he is entitled to the benefit of is a doubt founded upon reason—for which a reason can be found in the evidence. It is not to be a mere guess that perhaps after all, although the evidence appears to show his guilt, he may not have been guilty, or a mere speculation upon some fine drawn theory as to the possibility of his innocence. But it is to be precisely what the law defines it—a reasonable doubt, a doubt founded upon the evidence and for which in your minds and consciences you are able to find a reason. If you find such
139 a reasonable doubt in your minds it will be your duty to give the defendant the benefit of it and to acquit him.

If, however, you are satisfied beyond any such reasonable doubt that he is guilty of the offense charged in the indictment, your duty will be equally clear to render a verdict of guilty.

Are there any requests or exceptions?

Mr. RIDGWAY: Will your honor kindly charge this jury that they may take into consideration from the evidence whether persons other than this defendant had access to the room.

The COURT: Yes, of course.

Mr. RIDGWAY: And will your honor also charge the jury that it is not sufficient for the prosecution to establish that these carbon sheets were similar to those used in the game of policy, but it must appear beyond a reasonable doubt from the evidence that they were actually used in the same and represent a record of bets or plays in the game?

The COURT: Yes, I will charge that.

Mr. RIDGWAY: And that if the jury have any reasonable doubt upon those subjects, the prisoner is entitled to be acquitted?

The COURT: Certainly.

Mr. SCHURMAN: I ask your honor to charge also the fact that it was not the expert alone who testified upon the rolls, but that Mr. Balmer and Mr. Steele also testified upon that point?

The COURT: Yes, I had forgotten that.

Mr. SCHURMAN: And I ask your honor to charge that if they are satisfied beyond a reasonable doubt that these sheets which have been called manifold sheets are of a kind commonly used in promoting the game of policy, and if they find beyond a reasonable doubt that the defendant was in possession of them, they must convict.

The COURT: Upon that subject I ought to say this: The evidence before you, and the only evidence before you, touching the manner in which the game of policy was played, indicated that sheets similar to those which were found in the trunk were not made, were
140 not created, did not come into existence except at the time that plays were made. The testimony before you was that those sheets were created and made in the course of playing the game, and when a person bet then the numbers were put upon the sheets. Therefore, if these sheets found in the defendant's trunk, or the trunk said to be the defendant's, were policy sheets, as the district attorney said they were, then the deduction would be inevitable; I think, that they must have been sheets which were used in playing the game, because the game was played, partly, at least, or the play was initiated by making these sheets. Therefore, the mere fact that a man had a large number of sheets which were copies or samples of sheets, or similar, which were put there for the illustration of the game say, or any other reason, would not make them sheets which were used or known, commonly, as being used in playing or making the game of policy. But if you find there were in this man's possession a large number of sheets which, upon their face, appeared to be similar to those used in the game of policy, that would be a different matter for you to take into consideration in determining whether or not those particular sheets had been used in playing the game.

Mr. RIDGWAY: I except to that portion of your honor's charge where you say: "But if you find there were in this man's possession a large number of sheets which, upon their face appeared to be similar to those used in the game of policy, that would be a different matter for you to take into consideration in determining whether or not those particular sheets had been used in playing the game," and request you to charge that they must actually represent them.

The COURT: That is what I meant to say, of course—that they must actually represent them.

(The jury retired at 11:10 a. m.)

At 3:30 p. m. the jury returned to court, when the following proceedings occurred:

141 The COURT: I have received a communication from your foreman in which you inform me that you find it impossible to agree and ask to be discharged. The case is one which has taken a long time to try and a very important case both to the People and defendant, and has involved a large amount of documentary

and other evidence. I should not feel it to be consistent with my duty to permit you to arrive hastily—and I should consider now hastily—at the conclusion that you cannot, upon a fair review and comparison of the evidence, arrive at an agreement one way or the other. Last night I told you that I should postpone charging you in order that you may have a fair opportunity to determine, without unnecessary inconvenien*ience*, the issue; and I feel that you have not yet taken the time that reasonable men might well occupy in attempting to arrive at an unanimous conclusion upon the evidence which has been submitted.

Now, if there is any question relating to the court or relating to the law of the case which any juror desires to be instructed upon, I shall be very happy to extend to you such assistance as I can.

The TWELFTH JUROR: I would like to have a definition again of the point of law as to his knowingly having in his possession.

The COURT: It is an essential element of the crime with which the defendant is charged that he should have in his possession not only papers and documents or instruments used in playing the game of policy, but that he should have them knowingly in his possession. I charge you that that means in the first place that he should know that those papers, which are said to be policy papers, were in his possession, and in the second place that he should know that they were policy slips or papers. I also said to you that if you found that those documents which have been produced by the district attorney, and which have been testified to as policy slips,
142 were in point of fact policy slips used in playing the game of policy, and if you believe that they had been found in the actual or constructive possession of the defendant, then the statute prescribed that that possession by the defendant is presumptive knowledge that they were knowingly in his possession.

Now, if there is anything further on that point that I can say to help you I shall be very glad to do so. Does that cover your question, Mr. Juror.

The TWELFTH JUROR: Yes, sir.

The COURT: Is there any other question that any other member of the jury would like to ask?

No answer.

Mr. RIDGWAY: I will ask your honor also to say to the jury that the proof shows also beyond a reasonable doubt that they represented actually——

The COURT: I have already charged the jury on that subject.

The jury again retired.

At 10:45 p. m. the jury returned into court, when the following proceedings were had:

The COURT: Gentlemen of the jury, I have received from you two questions which I propose to answer. The first one is whether you are to understand that proof of simple possession of policy slips is presumptive evidence of possession thereof knowingly.

That is precisely the thing that the code provides shall be presumptive evidence of possession knowingly. If you find that a man or this defendant had in his possession these papers, which were policy slips used in the game of policy, that mere fact of possession by him is presumptive notice, under the statute, that he held them and had possession of them knowingly.

The second question is this: Is the fact that the policy slips were found in the trunk evidence that they were known to be there by the defendant? It is unquestionably evidence of that fact
143 to be considered by you if you find that they were policy slips and if you find that the trunk in which they were was a trunk owned or controlled or used by the defendant. That evidence—evidence of those facts—should also be considered in conjunction with the other evidence in the case, if you believed, which tended to show that in the same trunk there were other papers and documents which were attempted to be identified as the property of the defendant, and that upon some of the rolls, the covers which enclosed the rolls, was handwriting which was testified to as being the handwriting of the defendant. If you believe that testimony and find those facts to have been established, it would furnish evidence which would justify your conclusion that the defendant knew that these rolls or policy slips, if they were policy slips contained in the rolls, were known by the defendant to be in the trunk.

If I can make it any clearer I shall be very glad if any member of the jury should ask me to go any further.

Mr. RIDGWAY: May I ask your honor to charge this jury that, if they found the rolls or believed them to be policy slips, and yet there was no proof to show that they were ever used in a game of policy, but were only similar to those used in a game, they cannot convict this defendant.

The COURT: I think I have already so charged.

Mr. RIDGWAY: Will you so charge now, your honor?

The COURT: I decline to charge other than I have already charged.

Mr. RIDGWAY: Will your honor state that you have so charged?

The COURT: That they cannot convict unless those rolls represented the numbers used in the game, and that they actually represented the drawings of numbers or to be drawn in some game, and that they cannot infer that.

144 Mr. RIDGWAY: That they must have the proof beyond a reasonable doubt to that effect before they can convict.

The COURT: I have already charged the jury that, under the evidence in this case respecting the method of playing the game of policy, such rolls as were found in the trunk were not created and did not come into existence until the game of policy was played, and therefore, if they found in the trunk these papers which were papers used in the game of policy, they must have been created and must have been used for that purpose.

Mr. RIDGWAY: And they must find that they were actually used.

The COURT: Yes.

The jury retired at 10:50 p. m., and at 10:55 again returned to court and rendered a verdict of "Guilty."

This case contains all the evidence offered by either party on the trial of this action.

145 PEOPLE'S EXHIBIT 53, MARCH, 1900.

	$35 00	
45	(1)	$30 00
53	(1)	40 00
Bway.		
29	(1)	30 00
Bill	(3)	60 00
Lon	(1)	23 00
Stanly	(2)	20 00
25	(6)	40 00
Perry	(1)	40 00
17	(1)	20 00
Snore	(1)	30 00
35	(1)	26 00
39	(1)	35 00
24	(2)	25 00
1353	(1)	30 00
36	(2)	50 00
Doyle	(1)	50 00
28	(1)	35 00
Nic	(2)	30 00
52	(5)	25 00
41	(1)	30 00
34	(1)	30 00
66	(3)	50 00
11	(6)	25 00
30	(1)	25 00
7	(1)	37 00
54	(1)	20 00
16	(1)	55 00
63	(1)	20 00
2888	(1)	35 00
Lill		
44	(6)	30 00
48	(6)	50 00
43		
57	(1)	40 00
68	(1)	30 00
7	(1)	60 00
456	(1)	13 00

146	422	(1)		25 00
	L			
	38	(1)		45 00
	27	(5)		40 00
	100	(1)		35 00
	20			
	540			20 00
	56	(1)		18 00
	471	(2)		35 00
	33	(1)		30 00
	18			
	46	(1)		20 00
	553	(1)		22 00
	629	(5)		40 00
	107	(2)		45 00
	1758			
	402	(5)		20 00
	90	(1)		30 00
	81	(2)		35 00
	150	(1)		30 00
	19			
	71	(1)		30 00
	Part	(1)		35 00
	3	(2)		25 00
	106	(5)		30 00
	21	(1)		25 00
	4	(2)		40 00
	42	(1)		45 00
	9	(1)		40 00
	220	(4)		50 00
	10	(1)		20 00
	60	(3)		25 00
	319 Gare Back	(22)		20 00
	49	(2)		30 00
	155	$17\frac{1}{2}$		
				$2,094 00

D. N. C.

147 PEOPLE'S EXHIBIT 54.

NEW YORK, *Sep.* 12, 1900.

A. F. Silverstone.

DEAR SIR: Will you please have satisfaction piece at your office on Friday, Sept. 21st, at 12 o'c. noon. "Mtg. on lot in 117 St."

Yours respectfully, ALBERT J. ADAMS.

PEOPLE'S EXHIBIT 55.

NEW YORK, *M'ch* 25, 1901.

Mr. Geo. M. Birdsall, treas.

DEAR SIR: Your letter of M'ch 19th received.

In reply I would say that I would like to take the extra $20,000—twenty thousand—for a year from 29th of May 1901.

Please let me know if this proposition is all right.

Yours respectfully, ALBERT J. ADAMS.

148 On pages 25 and 27 respectively of Exhibits 23, 24, 25, 26, 27 and 28 appear the following entries:

Page 25.			Page 27.	
28	4		Mc	54
P	4		104	65
25	3		8	25
6	3		71	
10	3		92	
51		550	47	30
60		550	Jake	28
F	5		80	25
23	All		88	
487	3		34	
Eig	3		401	4

Stipulation Made with Regard to Exhibits.

THE PEOPLE OF THE STATE OF NEW YORK
against
ALBERT J. ADAMS.

People's Exhibit No. 2 is a trunk or a small hat box, 20 inches long, high and wide. It had no marks or any other characters designating ownership on it when found.

People's Exhibit No. 3 is a tin box, 14 inches long, 6 inches deep and 10 inches wide, bearing in red painted letters the letters "A. J. A. No. 2."

People's Exhibit No. 4 is a tin box of equal dimensions bearing the letters "A. J. A. No. 1," painted in red on the box.

149 People's Exhibit No. 5 is an ordinary letter press copying brook, with a white piece of paper pasted on the outside of front cover, on which are the capital letters, "A. J. A.," and part of the book had been used for making letter-press copies of letters. At the end of all the letters therein appear the words "Albert J. Adams" in writing with pen and ink.

People's Exhibit No. 6 is nine sheets of paper, all headed "Mr Albert J. Adams, in account with Pocher & Co., real estate and insurance, &c.," all dated December 7th, 1901, the words "in account with Pocher & Co.," &c., being lithographed at the head of each sheet of paper comprising this exhibit. Under such heading appear columns of figures set opposite names and certain premises designated by street and number.

People's Exhibit No. 7 is two sheets of paper fastened together, bearing the same headings as Exhibit No. 6. It is dated December 7th, 1901, and bears the name "Albert J. Adams" in pen and ink handwriting, and columns of figures set opposite names and premises designated by street and number, as in Exhibit No. 6.

People's Exhibit 8 consists of five sheets of paper bearing the same heading and general figures and characters as in Exhibits Nos. 6 and 7.

People's Exhibit No. 10 is a similar box to Peo. Ex. 3 and marked in the same way, except that it is marked "A. J. A., No. 3."

People's Exhibit No. 11 is a roll containing sheets of a yellowish tissue paper, on each of which sheets are a number of figures and other marks appearing to have been made by an impress from a carbon sheet. Six similar sheets are reproduced in the record, except as to the paper. The other sheets in the roll are similar to the sheets reproduced on the record, differing in numbers and bearing the same date.

There are one hundred or more sheets in the roll constituting this exhibit.

150 Peo. Ex. No. 12 is one sheet of yellowish paper from the roll of paper, described in stipulation with regard to People's Exhibit No. 11, and similar in form and appearance to other sheets in People's Exhibit No. 11, and to those sheets fac similes of which are reproduced in this record.

People's Exhibit No. 23 is a small red leather covered memorandum book, pocket size, containing various entries of words, numbers, addresses, dates and other characters. On the outside of the front cover is pasted a small piece of white paper bearing in writing in ink the words "May, 1901."

People's Exhibit No. 24 is a similar book, except on the outside are the words "June, 1901."

People's Exhibit No. 25 is a similar book, except on the outside are the words "July, 1901."

People's Exhibit No. 26 is a similar book, except on the outside are the words "August, 1901."

People's Exhibit No. 27 is a similar book, except on the outside are the words "September, 1901."

People's Exhibit No. 28 is a similar book, except on the outside are the words "October, 1901."

People's Exhibit No. 29 is a similar book, except on the outside are the words "November, 1901.

People's Exhibit No. 30 is a similar book, except on the outside are the words, "Brewery, College Point."

People's Exhibit No. 32 is a large blue envelope on which is written in blue pencil, "P. Law."

People's Exhibit No. 33 is a blue envelope bearing the words, in handwriting in ink, "Old Drift Wood."

People's Exhibit No. 34 is a yellow envelope, with a printed letter head, "From West Side bank, 485-487 Eighth avenue, New York," bearing in handwriting in black ink the words, "Blank Stamps." This envelope contains a number of unengraved margins of sheets of postage stamps.

151 People's Exhibit No. 35 is a piece of white paper, about 3 by 5 inches, bearing letters, words and figures.

People's Exhibit No. 36 is a card bearing the business address of Thomas & Eckerson, real estate and insurance brokers, printed upon one side, and upon the other side the words, "Dr. Baskowitz, 40 East 41st street, Kidneys."

People's Exhibit No. 37 is a piece of white paper about 3 by 5 inches, bearing words and figures in pencil handwriting.

People's Exhibit No. 38 is a piece of white paper bearing words and figures in handwriting in ink.

People's Exhibit No. 39 is a piece of white paper bearing in ink handwriting, "Daniel Griffin, 536 East 164th street."

People's Exhibit No. 40 is a piece of white paper bearing the words in handwriting in ink, "Streve, Allen, Hughes and McMicken, Bailey building."

People's Exhibit No. 41 is a piece of white paper bearing in writing in ink words and figures and attached thereto is a printed business card of James Walsh, real estate.

People's Exhibit No. 42 is a piece of white paper bearing in ink handwriting the words "F. Featherstone, 38 Engine, 155th street and Am. Av., 2 Engine."

People's Exhibit No. 43 is a piece of white paper bearing the same words and figures as People's Exhibit No. 42.

People's Exhibit No. 44 is a newspaper clipping bearing the words written in print, "N. Y. Herald, June 26th, 1900."

People's Exhibits Nos. 34 to 44, both inclusive, were taken from the large envelope, People Exhibit No. 33, marked "Old Drift Wood."

People's Exhibit No. 45 is a blue envelope bearing the words written in ink, "McLean, Simpson & Co., year of 1900."

152 People's Exhibit No. 46 is a white envelope bearing the printed letter head of Thomas & Eckerson, real estate and insurance brokers, and bearing the word "Mexico" written in black ink.

People's Exhibit No. 47 is a white envelope bearing the printed letter-head of Albert J. Adams, Jr., 71 Broadway, New York, and bearing the word "Baker" written in blue pencil.

People's Exhibit No. 48 is a white envelope bearing the word "Sapphire" written in black ink and containing a typewritten communication appearing to relate to the Sapphire Match Company, addressed to the board of directors of the Sapphire Match Company, and signed "Edward F. White, Mgr. Sapphire Match Co."

People's Exhibit No. 49 is a small white envelope bearing the words and figures in blue lead pencil. "Policy bill, *Herald*, January 29th, 1900." Enclosed in this envelope was a newspaper clipping entitled "Crusade upon saloon and policy shop," and this newspaper clipping bears the words written in blue lead pencil "*Herald*, Jan. 29, 1900."

People's Exhibit No. 50 is a piece of white paper, 12″ long, 6″ wide, bearing various words and figures, including the words November 5, 1900.

People's Exhibit No. 51 is a piece of pink paper purporting to be a check for $189.08 upon the West Side bank, in favor of Samuel A. Teets, and signed with the words Albert J. Adams, written in black ink.

People's Exhibits 53, 54 and 55 are printed in full in this record.

People's Exhibits Nos. 56, 57, 58 and 59 are respectively pieces of white paper, 8″ long, 6″ wide, bearing various words and figures, written and (or) printed in lead pencil.

People's Exhibit No. 60 is a piece of white paper, about 7″ long and 5″ wide, bearing various numbers and names of streets, and columns of figures; one column is headed "Taxes," printed by
153 hand in blue lead pencil. One column is headed "Int.," printed by hand in blue lead pencil.

People's Exhibit No. 61 is a piece of white paper, 8″ long, 5″ wide, bearing, written in lead pencil, various names of streets and various numbers and columns of figures. One column is headed "Rent," written in lead pencil; one column is headed "Exp.;" one column is headed "Int. and taxes;" one column is headed "Total exp.;" one column is headed "Profit & loss."

People's Exhibit No. 62 is a piece of white paper, about 5″ long, 3″ wide, bearing in handwriting, in lead pencil, on one side, "McClain, Simpson & Co.," and on the other side, written in lead pencil, the words, "Watson"—"Marken," "Swenson."

People's Exhibit No. 63 is a piece of white paper, about 3″ long, 2″ wide, bearing numbers of streets, with figures set opposite them.

People's Exhibit No. 64 is a piece of white paper, 7″ long, 3″ wide, bearing various words and numbers.

People's Exhibit No. 65 is a white envelope 6″ long, 3″ wide, bearing words and figures, written in blue lead pencil, as follows: Box 1, miscellaneous; box 2, monthly statement; 3, monthly statement.

People's Exhibit No. 67 is a piece of white paper, 6″ long, 3″ wide, bearing various figures, written in black lead pencil.

People's Exhibit No. 68 is a piece of brown paper, 12″ long, 8″

wide, bearing various words and figures, written in black-lead pencil.

People's Exhibit No. 69 is a piece of white paper, 7" long, 3" wide, bearing various words and figures, written in black ink; among these words are the words "Bal. to Albert J. Adams."

People's Exhibit No. 70 is a piece of white paper, 5" long, 3" wide, bearing various words and figures, written in black ink.

154 People's Exhibit No. 71 is a piece of white paper, 8" long, 7" wide, headed "Net profits for years 1897, 1898, 1899, 1900, 1901, under which appear monthly tabulated statements for years 1897, 1898, 1899, 1900 and 1901, all written in black ink.

People's Exhibits Nos. 72, 73, 74 and 75 respectively are sheets of white paper, 7" long, 5" wide, bearing columns of words and figures under the headings of "House and rent exp.," "Interest & taxes," "Total exp." and "Profit and loss."

People's Exhibits Nos. 76, 77, 78 and 79 respectively are sheets of white paper, 12" long, 7" wide, bearing columns of figures, written in black lead pencil, and bearing dates respectively October, 1900; September, 1900; August, 1900, and July, 1900.

People's Exhibit No. 80 is a piece of white paper, 6" long, 3" wide, bearing various figures, written in black lead pencil.

People's Exhibit No. 81 is a piece of white paper, 9" long, 6" wide, entitled with the words, written in black ink, "The Karsch Brewing Co.," bearing thereunder various figures set opposite months of the year.

People's Exhibit No. 82 is a piece of white paper, 5" long, 3" wide, bearing columns of figures, written in black lead pencil.

People's Exhibit No. 83 is a piece of white paper, 6" long, 3" wide, bearing columns of figures, written in black lead pencil.

People's Exhibit No. 84 is a white envelope, 7" long, 3" wide, bearing the printed letter head of Thomas & Eckerson, real estate & insurance brokers, Wallack's Theatre building, Nos. 33–35 West 30th street, one door east of Broadway, New York, and bearing the words, printed by hand in blue pencil, "blank stamps." Contained in this envelope were a number of mucilaged strips of paper, appearing to be margins surrounding sheets of United States postage stamps.

155 People's Exhibit No. 85 is an envelope like People's Exhibit No. 84, bearing the words, written in black ink, "Civic Club—Goddard;" and in the lower left-hand corner thereof, hand printed in ink, the word "Goddard."

People's Exhibit No. 86 is a newspaper clipping bearing the words, printed by hand in blue lead pencil "April 27, 1901."

People's Exhibit No. 87 is a piece of white paper bearing the addresses, printed in blue lead pencil, 390 Ninth avenue, 618–620 Ninth Ave., and 518 Sixth Ave.

People's Exhibit No. 88 is a piece of white paper, 6" long 4' wide, bearing various words and figures, written in black ink.

People's Exhibit No. 89 is a small white envelope bearing the letters "Int.," written in black ink.

People's Exhibit No. 91 is a piece of white paper, 12" long 8" wide, bearing columns of typewritten figures, with various typewritten names set opposite, also words and figures written in black-lead pencil.

People's Exhibit No. 92 is a white envelope, 9" long, 4" wide, bearing word, printed in blue lead pencil, "Taxes." Printed in the upper left-hand corner of envelope is the letter head of Thomas & Eckerson, real estate & insurance brokers, Wallack's theatre building, Nos. 33–35 West 30th street, one door east of Broadway, New York.

People's Exhibit No. 93 is a piece of white paper, bearing two columns of letters and figures, hand-printed in ink, as follows:

	28	— 4	
	P	— 4	
	25	— 3	
	6	—	3
	10	—	
		— 2	
		— 5	
	F	—	
	60		
	151	—550	
156		—	
	87	— 3	
	23	— 4	
	Eig.	— 3	
	15	— 4	
	C	—457	

People's Exhibit No. 100 is a cancelled check upon the National City bank, bearing various endorsements, and among them the words, written in ink, "Albert J. Adams."

People's Exhibit No. 101 is a cancelled check upon the National City bank, bearing various endorsements, and among them the words, written in black ink: "Pay to the order of Mary B. Benjamin—Albert J. Adams."

People's Exhibit No. 102 is a cancelled check upon the National City bank, bearing the single endorsement, written in black ink, "Albert J. Adams."

People's Exhibit No. 103 is a paper purporting to be an affidavit of title, and at the foot of which appear the words, in printing and writing: "Sworn to before me this 18th day of June, 1901," under which, in writing, appear the words, "William F. Baeck, notary public, New York county," opposite which appear the words, in writing, "Albert J. Adams."

People's Exhibit No. 104 is a paper purporting to be an affidavit of title, at the foot of which appear, in printing and writing, the words and figures: "Sworn to before me this 15th day of May, 1901, John C. Eckerson, notary public (No. 3, N. Y. Co.)," opposite which appear, in writing, the words, "Albert J. Adams."

People's Exhibit No. 105 is a paper purporting to be an affidavit of title, at the foot of which appear, in printing and writing, the words and figures: "Sworn to before me this 5th day of June, 1901," and thereunder, in writing, "Wm. F. Baeck, notary public, N. Y. Co., 194," opposite which appear, in writing, the words, "Albert J. Adams."

157 People's Exhibit No. 106 is a typewritten letter on paper bearing the letter-head of Thomas & Eckerson, Nos. 33–35 West 30th street, dated June 5th, 1901, addressed to the Lawyers' Title Insurance Co., and signed, in writing, with the words "Albert J. Adams."

People's Exhibit No. 107 is a typewritten letter on paper bearing the letter-head of Thomas & Eckerson, real estate and insurance brokers, Nos. 33–35 West 30th street, dated June 20th, 1901, addressed to the Lawyers' Title Insurance Co., and signed, in writing, with the words "Albert J. Adams."

People's Exhibit No. 108 is a large piece of brown paper bearing the single word, hand printed in ink, "Sapphire."

People's Exhibit No. 109 is a piece of brown paper, 14″ long, 8″ wide, bearing various figures written in lead pencil.

People's Exhibit No. 110 is a check book containing blank checks of the West Side bank, with the words printed on the outside cover, in yellow lead pencil, "West Side."

People's Exhibit No. 111 is a small paper portfolio with "No. 2" printed on the outside cover in black ink. This portfolio contains eight small pieces of brown paper bearing various words and figures, written in lead pencil.

People's Exhibit No. 112 is a small envelope addressed with words, written in ink, as follows: "Mr. A. J. Adams, 35 West 30th St., New York." "Aug. 7" is written upon this envelope, in blue lead pencil.

People's Exhibit No. 113 is a letter addressed to Mr. A. J. Adams 35 West 30th street, on the letter-head of Pocher & Co., real estate and insurance brokers, 595 Lexington Ave. On the back of this letter the word "Pocher" is written in blue lead pencil.

158 People's Exhibit No. 114 is a piece of white paper, 8″ long, 5″ wide, bearing the following words and figures, written in black ink:

M'ch 22.	J. W. Cody & Co	$1,000.00
" 25.	A. J. Adams	20,000.00
Apr. 1.	A. J. Jantzen, Jr	1,320.00
" 1.	" " "	1,993.50
" 1.	J. B. Brady	5,808.12
" 3.	A. J. Jantzen, Jr	430.27
" 5.	A. J. Adams	20,000.00
" 6.	G. F. Balmer	3,146.46
" 7.	A. J. Jantzen, Jr	1,000.00
" 8.	J. W. Cody	458.00
	April 5.	
" 25.	Thomas Draper	3,500.00
		$58,656.35
April 5.	Cash	3,000.00
		$61,656.35

On the back of this paper appears the lithograph letter-head of Thomas & Eckerson, real estate & insurance brokers, Nos. 33–35 West 30th street, New York.

People's Exhibit No. 115 is a small envelope addressed with the words, written in ink, "Mr. A. J. Adams, 35 West 30th street, New York city, N. Y." Across the face of the envelope is written, in blue lead pencil, "Aug. 7."

People's Exhibit No. 116 is a piece of white paper, 5" long, 3" wide, bearing various words, letters and figures, written in ink.

People's Exhibit No. 117 is a piece of white paper, 4" long, 2" wide, bearing various words, letters and figures, written in black lead pencil.

People's Exhibit No. 119 is an envelope addressed to Mr. Albert J. Adams, 35 West 30th street, New York city. Across the face of this envelope are printed, in blue lead pencil, the words "Ludlow, Day & Co."

159 People's Exhibit No. 120 is a small white envelope addressed with the words and figures written in ink, "Mr. A. J. Adams, 35 West 30th St., New York city, N. Y." Across the face of this envelope is printed, in blue lead pencil, "July 25."

People's Exhibit No. 121 is a piece of white paper, 8" long, 5" wide, bearing the lithograph letter-head of Thomas & Eckerson, real estate & insurance brokers, Nos. 33–35 West 30th street, New York, upon which appear the following words and numbers, written in lead pencil:

Louis letters.
Policy bill.
72 W. 36.
H. P. Whitaker Mtg.
Comparison of taxes.
Corners for sale.

Ludlow, Day & Co., 40 St. and 2 Av.
Cody assignment.
Testimony Windsor fire case.
A. R. Baker mining "Little Rockus."
Rothchild's remarks.
Trusts.
Cody inventory.
Blank notes.
Hon. Geo. Mead, Troy, N. Y.
Map of northern Maine.
Sappho.
Gen. tax law.
Story of Erie.
Union brewery.
Horn agreement.
McClain-Simpson papers.
Koch papers.
Reference map L. I. City.
Brewery gain 1897, 1898, 1899, 1900.

People's Exhibit No. 122 is a white envelope addressed with the words and figures, written in ink, "Mr. A. J. Adams, 35
160 West 30th street, New York city, N. Y." Aug. 3 is printed across the face of the envelope, in blue lead pencil.

People's Exhibit No. 124 is a yellow envelope, in the upper left-hand corner of which is printed "Return to West Side bank, 485–487 Eighth Ave., New York, N. Y., if not delivered within five days." Written in ink across the face of the envelope are the words "Albert J. Adams—Koch notes."

People's Exhibit No. 125 is a piece of paper purporting to be a promissory note, containing various endorsements, among which are the words written in ink, "Albert J. Adams."

People's Exhibit No. 126 is a piece of paper purporting to be a promissory note, bearing various endorsements, among which are the words, written in ink, "Albert J. Adams."

People's Exhibits Nos. 127, 128 and 129 are respectively papers purporting to be promissory notes bearing various endorsements, among which, written in handwriting, are the words "Albert J. Adams."

People's Exhibit No. 130 is a piece of white paper, 5″ long, 3″ wide, bearing various words, letters and figures, written in black lead pencil.

People's Exhibit No. 132 is a white envelope, 7″ long, 3″ wide, bearing the words, written in ink, on the face of the envelope, "Mr. A. J. Adams, No. 35 West 30th street, city," and the words printed in blue lead pencil, "Rottchild adv."

People's Exhibit No. 134 is a white envelope, 8″ long, 3″ wide, bearing the words, written in ink, "A. R. Baker report."

People's Exhibit No. 135 is a piece of white paper, 12″ long, 7″ wide, bearing various words and figures, written in black lead pencil.

People's Exhibit No. 138 is a white envelope, 9″ long, 4″ wide, bearing the typewritten words, Mr. Albert J. Adams, and the words, written in blue lead pencil, Edwards papers.

161 People's Exhibit No. 140 is a sheet of white paper, 18″ long, 8″ wide, containing various typewritten words and figures under the heading, also in typewriting, Maloney *v.* Nelson, statement, Sept. 13th, 1899.

People's Exhibits "C," "D," "E," 141, 142, 143, 144, 146, 149, 150, 151, 152, 153, 154, 156, 157, 158, 159, 160, 161, 163, 164, 165, 166, 168, 170, 172 and 173, were rolls of manifold sheets similar to those contained in People's Exhibit 11, and described above, all wrapped in newspapers, and each roll containing 100 or more manifold sheets similar in general appearance and character to those contained in Peo. Ex. No. 11.

People's Exhibits Nos. 144 C, 146, 142 D and 143, are similar rolls of similar paper with similar marks and numbers on them, wrapped in newspapers in the same way as People's Exhibit No. 11.

People's Exhibit 143*a* is a piece of newspaper that was wrapped around the roll marked "Peo. Ex. 143," on which are the words and figures, "X, Nov. 15," and "E, Nov. 15, 1901," written in print with black lead pencil.

People's Exhibit 144*a* is a piece of the newspaper that was wrapped around the roll marked "People's Exhibit 144," on which are the words, "Nov. 14, night," written in print with blue lead pencil.

People's Exhibit C*a* is a piece of the newspaper that was wrapped around the roll marked "People's Exhibit C," on which are the words, "Nov. 25 X," written in print with blue lead pencil.

People's Exhibit "D*a*," is a piece of newspaper that was wrapped around the roll marked "Peo. Ex. 147," on which are the words, "X, Nov. 20," printed with a blue lead pencil, and the letters "A. J. A." printed with black lead pencil and cancelled with blue pencil marks.

162 People's Exhibit 146*a* is a piece of the newspaper that was wrapped around the roll marked "People's Exhibit 146," on which are the words, "Night, Nov. 13," written in print with blue lead pencil.

People's Exhibit No. 11*a* is a piece of the newspaper that was wrapped around the roll marked "People's Exhibit No. 11," on which are the words, "Nov. 25," written in print in blue lead pencil.

People's Exhibit No. 142*a* is a piece of the newspaper that was wrapped around the roll marked "People's Exhibit No. 142," on which are the words, "X, Nov. 13," written in print with blue lead pencil.

People's Exhibit No. 174 is a white envelope, 9″ long, 4″ wide, bearing the printed letter head Albert J. Adams, Jr., 71 Broadway, New York, and bearing the words, in typewriting: Statement; Maloney *v.* Nelson.

People's Exhibit No. 175 consists of various pieces of brown and white paper, bearing various words and numbers in printing and in writing.

People's Exhibit No. 177 is a piece of paper, 14″ long, 8″ wide, bearing a column of typewritten words and figures under the heading: Disbursements for Windsor hotel.

People's Exhibit No. 179 is a small aluminum card case with the words A. J. Adams engraved on the case, containing four white cards, upon which are printed the words, Albert J. Adams, 35 West 30th street, New York.

People's Exhibit No. 180 is a piece of paper, 12″ long, 8″ wide, dated November 29th, 1901, and bearing a communication beginning with the words, "Mr. A. J. Adams—Dear Sir."

People's Exhibit No. 181 consists of two pieces of white paper, with the printed words in the left-hand corner of each, McClain, Simpson & Co., manufacturers and retail dealers, carpets, furniture, etc., 539–541 Eighth Ave., N. W. cor. 37th street, underneath which are written in ink various names and dates and figures.

163 People's Exhibit No. 182 is a brown envelope, 6″ long, 3″ wide, bearing the words, written in ink, Mr. A. J. Adams, 40 West 34th St. New York city.

People's Exhibit No. 183 is a piece of white paper, 8″ long, 4″ wide, bearing the words, written in ink, Mr. A. J. Adams, 40 West 34th street, New York city.

People's Exhibit No. 184 is a double sheet of white paper, dated January 24th, 1901, and entitled:

An act to amend the penal code by inserting therein three additional sections to be known as sections three hundred and forty-four-A, three hundred and forty-four-B and three hundred and forty-four-C, relative to the prevention of policy playing.

People's Exhibit No. 185 is a white envelope, 7″ long, 3″ wide, bearing the typewritten words, Albert J. Adams, Esq., 35 West 30th street, city.

People's Exhibit 186 is a letter-press copy of People's Exhibit 54, and appears on page 95 of the letter-book marked People's Exhibit 5.

People's Exhibit 187 is a letter-press copy of People's Exhibit 55, and appears on page 121 of the letter-book marked People's Exhibit 5.

People's Exhibit No. 188 is a piece of paper purporting to be a bill rendered by Samuel A. Teets to A. J. Adams, dated Sep. 1, 1901.

People's Exhibit No. 189 is a piece of paper purporting to be a bill rendered by Samuel A. Teets to Mr. A. J. Adams, dated Oct. 1, 1901.

People's Exhibit No. 190 is a piece of paper purporting to be a bill rendered by Samuel A. Teets to Mr. A. J. Adams, dated November 1, 1901.

People's Exhibit No. 191 is a piece of paper purporting to be a bill rendered by Samuel A. Teets to Mr. A. J. Adams, dated Dec. 1, 1901.

164 People's Exhibit No. 192 is a piece of paper purporting to be a bill rendered by Samuel A. Teets to Mr. A. J. Adams, dated Dec. 1, 1901.

People's Exhibit "A" is a diagram of the ground floor of the premises, 40 West 34th street, borough of Manhattan, city of New York.

People's Exhibit "B" consists of a number of cards and small slips of paper, bearing various words and numbers, some in print and others in writing. These cards and pieces of paper were taken from the envelope marked People's Exhibit No. 33.

People's Exhibit "C" is a small card bearing the printed words Amasa Thornton, lawyer, 150 Broadway, New York. On the back of the card appear the words, written in ink: "Dear Al.—I left the papers with Bauerdorf; meet me there to-morrow at 11:00 a. m. A. T."

People's Exhibit "G" is three pieces of white paper purporting to be a copy of an option upon certain mining properties in Mexico.

People's Exhibit "H" consists of seven sheets of white paper, bearing typewritten matter, purporting to relate to mining properties in Mexico.

People's Exhibit "I" is a piece of white paper, 5″ long, 3″ wide, bearing various words written in ink.

People's Exhibit "J" is a piece of white paper, 5″ long, 3″ wide, bearing various words and numbers written in ink.

People's Exhibit "K" is a letter addressed A. J. Adams, Esq., 35 West 30th street, New York city.

People's Exhibit "M" is a paper purporting to be a bill rendered by the Hotel Savoy, Fifth avenue and 59th street, New York, to Mr. Al. Adams.

People's Exhibits "N," "O," "P," "Q," "R" and "S" are respectively white envelopes, about 6″ long and 3″ wide, addressed with the words, written in ink, Mr. A. J. Adams, 35 West 30th street, New York.

165 People's Exhibit "T" is a piece of white paper, 8″ square, bearing various words and figures, and purporting to be a lease by Albert J. Adams of certain rooms in the Hotel Netherlands.

People's Exhibit "U" consists of a number of books and papers, bearing various printed matter and pen and pencil memoranda, not marked separately in evidence.

People's Exhibit "W" is a letter, written in ink, dated May 6th, 1901, on paper bearing the lithograph letter-head of Thomas & Eckerson, real estate & insurance brokers, Nos. 33–35 West 30th street, addressed with the words, Mr. Balmer, and closing with the words, Yours, respectfully, Albert J. Adams, also written in ink.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

People's Exhibit "X" is a paper purporting to be an annual report of the Karsch Brewing Co. Upon this paper appears the words, written in ink, January 26th, 1901, Albert J. Adams, underneath which appears the following:

STATE OF NEW YORK, } ss.:
County of New York, }

Albert J. Adams, being duly sworn, deposes and says that he is the treasurer of the said Karsch Brewing Co., and that the foregoing annual report is signed by a majority of said corporation, and is true to the best of deponent's knowledge, information and belief;

underneath which appears, written in ink, the words, Albert J. Adams, and opposite to which appear the words, Sworn to before me this 26th day of January, 1901, Nathaniel Miller, Jr., notary public, Kings Co. Certificate filed in New York Co.

People's Exhibit "Y" is similar in all respects to People's Exhibit "X," except that People's Exhibit "Y" bears date January 16th 1900.

People's Exhibit "Z" is a paper purporting to be a certificate of incorporation of the Sapphire Match Co., bearing an acknowledgment, dated the 16th day of November, 1900, and signed with the words, written in ink, Albert J. Adams.

Through an error of the stenographer two exhibits were each marked "People's Exhibit C."

WM. TRAVERS JEROME,
District Attorney.
KELLOGG & ROSE,
Att'ys for App'l't.

165*a* (Here follow photolithographs marked pp. 165*b-c-d-e-f-g* & *h.*)

166 *Stipulation and Order.*

THE PEOPLE OF THE STATE OF NEW YORK
against
ALBERT J. ADAMS.

It is hereby stipulated and agreed that the foregoing shall be taken and admitted to be the complete and correct record of the case on appeal and bill of exceptions herein, and that the said record comprises all the material testimony herein.

Dated New York, June 10th, 1903.

WILLIAM TRAVERS JEROME,
District Attorney.

KELLOGG & ROSE,
Attorneys for Defendant and Appellant.

On the above stipulation and agreement it is

Ordered, that the foregoing bill of exceptions be, and the same hereby is, settled and signed as such, and that the same shall be placed on file as the original.

FRANCIS M. SCOTT,
Justice of the New York Supreme Court.

167 *County Clerk's Certificate.*

I, Thomas L. Hamilton, clerk of the supreme court, held in and for the county of New York, do hereby certify that the foregoing is a copy of the notice of appeal and of the judgment roll in the case of The People against Albert J. Adams, convicted by a jury of the felony of knowingly having in his possession a certain writing, paper and document representing and being a record of a chance, share and interest in numbers sold in what is commonly called policy, which said writing, paper and document is a record of numbers sold and lottery policies sold, commonly known as a manifold book, now on file in the clerk's office of said supreme court, and that the same have been compared by me with the originals and are correct transcripts therefrom, and of the whole of such originals.

Given under my hand and attested by the seal of the said court this 10th day of June, in the year of our Lord one thousand nine hundred and three.

THOMAS L. HAMILTON, *Clerk.*

168 *Order of Appellate Division Affirming Judgment. (Appealed from.)*

At a term of the appellate division of the supreme court, in and for the first judicial department, held at the court house thereof, in the county of New York, on the 7th day of July, 1903.

Present: Hon. Edward Patterson, Hon. George L. Ingraham, Hon. Edward W. Hatch, Hon. Frank C. Laughlin, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
against
ALBERT J. ADAMS, Defendant-Appellant.

The above named defendant having appealed to the appellate division of the supreme court, in and for the first judicial department, from a judgment of conviction rendered against him in the supreme court, in and for the county of New York (criminal term) and entered in the office of the clerk of said court on the 21st day of April, 1903; and the said defendant having likewise appealed from an order denying defendant's motion for a new trial, and said appeal having regularly come on to be heard before this court
169 in due form of law; and after hearing L. Laflin Kellogg, Esq., of counsel for the appellant, and Howard S. Gans, Esq., assistant district attorney, of counsel for the respondent, and due deliberation having been had thereon;

Now, on motion of William Travers Jerome, district attorney of the county of New York, it is unanimously

Ordered, That the said order denying the defendant's motion for a new trial be, and the same hereby is, affirmed; and is further unanimously

Ordered, That the said judgment of conviction appealed from as aforesaid be, and the same hereby is, affirmed.

Judgment of Affirmance. (Appealed from.)

New York Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,
against
ALBERT J. ADAMS, Defendant.

The above-named defendant having appealed to the appellate division of the supreme court, in and for the first department,
170 from a judgment of conviction rendered against him in the supreme court of the State of New York, in and for the county of New York (criminal term), and entered in the office of the

clerk of said court on the 21st day of April, 1903, and the said defendant having likewise appealed from an order denying defendant's motion for a new trial, and the said appeal having come regularly on to be heard before the justices of said court, and an order having been duly entered in the office of the clerk of the appellate division on the 13th day of July, 1903, affirming said judgment and order so appealed from as aforesaid;

Now, on motion of William Travers Jerome, district attorney of the county of New York, it is unanimously

Adjudged, that the said judgment and order so appealed from, as aforesaid, be, and the same hereby is, affirmed.

Dated New York, August 6th, 1903.

[SEAL.] THOS. L. HAMILTON, *Clerk.*

171 *Notice of Appeal to the Court of Appeals.*

New York Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
against
ALBERT J. ADAMS, Appellant.

SIR: You will please take notice that the above named defendant hereby appeals to the court of appeals of the State of New York from the order entered herein in the office of the clerk of the appellate division of the supreme court, in the first department, on the 13th day of July, 1903, affirming a judgment of conviction rendered against him and entered herein in the office of the clerk of the supreme court, in and for the county of New York (criminal term), on the 21st day of April, 1903, and from the judgment entered thereon in the office of the clerk of the county of New York on the 6th day of August, 1903, affirming said judgment of convic-
172 tion, and he hereby appeals from each and every part of said order and judgment, as well as from the whole thereof.

Dated New York, August 6th, 1903.

Yours, &c., KELLOGG & ROSE,
Attorneys for Defendant-Appellant, 120 Broadway, Borough of Manhattan, City of New York.

To William Travers Jerome, Esq., district attorney, attorney for respondent.

To Thomas L. Hamilton, Esq., clerk of the supreme court of the State of New York, in the county of New York, and clerk of the county of New York.

County Clerk's Certificate.

STATE OF NEW YORK, }
County of New York, } ss:

I, Thos. S. Hamilton, clerk of the said county, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original copy appellate division order, judgment and notice of appeal on file in my office, and that the same are correct transcripts therefrom, and the whole of such originals.

In witness whereof, I have hereunto subscribed my name and affixed my official seal this 27th day of August, 1903.

THOMAS L. HAMILTON, *Clerk.*

173 Court of Appeals.

STATE OF NEW YORK, ss:

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 10th day of November, in the year of our Lord one thousand nine hundred and three, before the judges of said court.

Witness, the Hon. Alton B. Parker, chief justice presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur Nov. 11th, 1903.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, }
ag'st
ALBERT J. ADAMS, Appellant. }

Be it remembered, that on the 28th day of August in the year of our Lord one thousand nine hundred and three, Albert J. Adams, the appellant in this action, came here into the court of appeals by Kellogg & Rose, his attorneys, and filed in the said court a notice of appeal and return thereto from the order of the appellate division of the supreme court in and for the first judicial department, affirming the judgment of conviction etc. And the People of the State of New York, the respondent in said action, afterwards appeared in said court of appeals by William Travers Jerome, district attorney. Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

174 Whereupon, the said court of appeals having heard this cause argued by Mr. L. Laflin Kellogg, of counsel for the appellant,

and by Mr. Howard S. Gans, ass't dist. att'y, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of conviction of the supreme court and the order appealed from in this action, be and are hereby in all things affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings thereon in this court, be remitted to the said supreme court.

Therefore, it is considered that the said original judgment of conviction be and is hereby in all things affirmed as aforesaid, and stand in full force, strength and effect.

And hereupon, as well the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office,

ALBANY, *Nov. 11th*, 1903.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein, attached thereto.

[L. S.] W. H. SHANKLAND, *Clerk.*

175 Court of Appeals.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, vs. ALBERT J. ADAMS, Appellant. | No. 444. W. H. O. P. G. B. M.

Appeal from an order and judgment of the appellate division, first department, unanimously affirming a judgment convicting the defendant of the crime of knowingly having possession of a writing, paper, and document representing and being a record of a chance, share, and interest in numbers sold in a gambling game commonly called "policy," and of knowingly having possession of papers — devices such as are commonly used in carrying on and playing the game called "policy," in violation of section 344-a of the Penal Code.

The conviction was had after a trial in the supreme court, before a justice thereof and a jury, on the 21st day of April, 1903.

The sections of the Penal Code under which conviction was had read as follows:

"344-*a*. A person who keeps, occupies or uses, or permits to be kept, occupied or used, a place, building, room, table, establishment or apparatus for policy playing or for the sale of what are
176 commonly called lottery policies, or who delivers or receives money or other valuable consideration in playing policy, or in aiding in the playing thereof, or for what is commonly called a lottery policy, or for any writing, paper or document in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery; or who shall have in his possession, knowingly, any writing, paper or document, representing or being a record of any chance, share or interest in numbers sold, drawn or to be drawn, or in what is commonly called policy, or in the nature of a bet, wager or insurance, upon the drawing or drawn numbers of any public or private lottery; or any paper, print, writing, numbers, device, policy slip, or article of any kind such as is commonly used in carrying on, promoting or playing the game commonly called policy; or who is the owner, agent, superintendent, janitor, or caretaker of any place, building or room where policy playing or the sale of what are commonly called lottery policies is carried on with his knowledge or after notification that the premises are so used, permits such use to be continued, or who aids, assists, or abets in any manner, in any of the offenses, acts or matters herein named, is a common gambler, and punishable by imprisonment for not more than two years, and in the discre-
177 tion of the court, by a fine not exceeding one thousand dollars, or both."

"SECTION 344-*b*. The possession, by any person other than a public officer, of any writing, paper, or document representing or being a record of any chance, share or interest in numbers sold, drawn or to be drawn, in what is commonly called policy, or in the nature of a bet, wager or insurance, upon the drawing or drawn numbers of any public or private lottery, or any paper, print, writing, numbers or device, policy slip, or article of any kind, such as is commonly used in carrying on, promoting or playing the game commonly called policy, is presumptive evidence of possession thereof knowingly and in violation of the provisions of section three — and forty-four *a*."

BARTLETT, *J.*:

As this is a unanimous decision of the appellate division of the supreme court that there is evidence supporting or tending to sustain the verdict of the jury, it is only necessary to consider the facts sufficiently to determine the questions of law presented by this appeal.

It appears that the defendant occupied an office in the city of New York, wherein was his desk, trunk, tin boxes, and other articles of personal property. On a certain occasion when the defendant was in his office, the officers of the law appeared and stated that

they had a search warrant. The defendant replied, in sub-
178 stance, before they proceeded to execute the same that it was not in his officer and that they would proceed at their peril. The officers thereupon placed the defendant under arrest and searched the premises. A large amount of papers were seized, which may be divided into two classes: (1) the papers referred to in the section of the Penal Code, under which this indictment was found; (2) and papers relating to the private affairs of the defendant.

The evidence discloses in detail the manner of conducting the gambling game known as "policy," from which it appears that certain papers are sent to a central point from different offices or places in the city where the game is conducted, known as "manifold-sheets." Among the papers seized in defendant's office were thirty-five hundred of these "manifold-sheets," upon some of which were endorsements and entries in his handwriting. At the trial these "manifold-sheets" were introduced in evidence as papers described in section 344-*a* of the Penal Code.

The private papers of the defendant were introduced in evidence for the double purpose of furnishing standards of his handwriting and also tending to prove that the office, in which the papers relating to the game of policy *was* found, was occupied by him. There were also other books and papers put into evidence, in the handwriting of the defendant, relating to the entries on the "manifold-sheets," that need not be more particularly described.

179 The first point made by the learned counsel for the appellant is, that by reason of the seizure of defendant's papers, as in the manner described, the defendant's constitutional right to be secure in his person, papers and effects against unreasonable searches and seizur- was violated, and he was also thereby compelled to be a witness against himself in contravention of the fourth, fifth and fourteenth articles of the amendments to the Constitution of the United States, and article 1, section VI, of the constitution of the State of New York, and section II of the bill of rights of this State.

Articles fourth and fifth of the amendments to the Constitution of the United States do not apply to actions in the State courts.

The first point, as stated, involves two distinct propositions that must be separated in considering them. The first is an alleged violation of the bill of rights which protects a citizen against unreasonable searches and seizures, and the other is an alleged violation of the Constitution by compelling a person in a criminal case to be a witness against himself.

There were two classes of papers seized at the time the search warrant was executed. The legality of the seizure of the papers described in the section of the Penal Code, under which the indictment was found, cannot be successfully challenged, it therefore re-
180 mains to consider the effect of seizing the private papers of the defendant.

In Greenleaf on Evidence (vol. 1, section 245-*a*) the learned author says: "It may be mentioned in this place that though

papers and other subjects of evidence may have been illegally taken from the possession of the party against whom they were offerred, or otherwise unlawfully obtained, this is no valid objection to their admissibility if they are pertinent to the issue. The court will not take notice how they were obtained whether lawfully or unlawfully, nor will it frame issues to determine that question."

In Commonwealth *v.* Tibbetts (157 Mass., 519) it was held as follows: "Evidence which is pertinent to the issue is admissible although it may have been procured in an irregular or even an illegal manner. A trespasser may testify to pertinent facts observed by him, or may put in evidence pertinent articles or papers found by him while trespassing. For the trespass he may be held responsible civilly and perhaps criminally; but his testimony is not thereby rendered incompetent. (Commonwealth *vs.* Dana, 2 Met. 329,337; Commonwealth *v.* Lottery Tickets, 5 Cush., 369,374; Commonwealth *v.* Intoxicating Liquors, 4 Allen, 593, 600; Commonwealth *v.* Welsh, 110 Mass., 359; Commonwealth *v.* Taylor, 132 Mass., 261; Commonwealth *v.* Keenan, 148 Mass., 470; Commonwealth *v.* Ryan, 157 Mass. 403; 1 Greenleaf's Evidence, sections 254*a* and 229; 1 Taylor's Evidence, section 922; 1 Bishop's Crim. Proc., 3rd ed., section 246.)

181 In this State the same principle has been recognized in Ruloff *v.* The People (45 N. Y., 213,) and a kindred principle in People *v.* Van Wormer, 175 N. Y., 188–195.

The underlying principle obviously is that the court, when engaged in trying a criminal cause, will not take notice of the manner in which the witnesses have possessed themselves of papers, or other articles of personal property, which are material and properly offered in evidence.

In the case before us, if there has been any illegal invasion of the rights of this defendant, by reason of alleged unlawful searches and seizures of private papers, his remedy is in an independent proceeding not necessary to be considered at this time. We do not wish to be understood as expressing an opinion in regard to the seizure of defendant's private papers. When the officers entered the defendant's office he assured them he did not occupy it and that they would proceed at their peril. It is beyond dispute that the question as to who occupied the office was most material in connecting the defendant with the "manifold-sheets," and other papers seized relating to the game of policy and that the private papers were important in this connection. The same may be said as to the standards of defendant's handwriting.

182 The next question is whether this defendant was compelled to be a witness against himself in violation of the constitution of this State. (Art. 1, section 6.)

The appellant's counsel places great reliance upon the case of Boyd *v.* The United States, (116 U. S., 616,) holding that an act of Congress which authorizes a court of the United States in revenue cases, on motion of the Government attorney, to require the defend-

ant or claimant to produce in court his private books, invoices and papers, or else the allegations of the attorney be taken as confessed, was unconstitutional, being repugnant to the fourth and fifth articles of the amendments to the Constitution of the United States.

Article IV deal- with searches and seizures and article V contains language identical with our State constitution, already quoted, to the effect that no person "shall be compelled *to* any criminal case to be a witness against himself."

In the case at bar, the defendant was not sworn as a witness, nor was he required to produce any books or papers. So far as this case is concerned, as already pointed out, the manner in which the witnesses for the People became possessed of the documentary evidence is a matter of no importance. We are of the opinion, therefore, that the defendant was not, in any legal sense, called upon to be a witness against himself in this criminal proceeding.

183 The next point argued by the appellant's counsel is, that sections 344*a* and 344*b* of the Penal Code, under which the indictment was found and the conviction had, are unconstitutional and void, for the reason that the defendant has been deprived of his liberty and property without due process of law, in violation of both the Federal and State constitutions.

We have here presented two distinct questions. We are unable to agree with the contention of appellant's counsel that these sections are to be read together. Section 344*a* creates the crime of which the defendant stands convicted; it is complete in itself and is in no way dependent upon the provisions of section 344*b*, the latter section establishes a rule of evidence only.

As to the alleged unconstitutionality of section 344*a* of the Penal Code. By article 1, section 9, of the constitution of this State, it is provided as follows:

"Nor shall any lottery or the sale of lottery tickets, pool selling book making, or any other kind of gambling, hereafter be authorized by law within this State:"

Section 336 of the Penal Code provides: "It is unlawful to keep or use any table, cards, dice or any other article or apparatus whatever, commonly used or intended to be used in playing any game of cards or faro, or other game of chance, upon which money is usually wagered at any of the following places;" etc.

184 Section 344*a* immediately follows a section of the Penal Code dealing with keeping betting and gambling establishments, and is an amplification of the law looking to the suppression of gambling, it being aimed at the game of "policy," so-called, which offered an opportunity to the poorer classes of making trifling bets and who could ill afford to lose their small earnings.

The papers referred to in section 344*a* are to be regarded the same as the tools of a burglar or the general gambling apparatus which are dealt with in the Penal Code.

The legislature, in addition to its ample and general powers in

dealing with the crime of gambling, has the sanction of the constitution of the State.

The legislature in order to protect game, has made it an offense for a person to have in his possession game-birds of the kind specified after a certain date. (Phelps *v.* Racey, 60 N. Y., 10, 14.) This court said in the case last cited:

"The legislature may pass many laws, the effect of which may be to impair or even destroy the right of property. Private interests must yield to the public advantage. All legislative powers, not restrained by express or implied provisions of the constitution, may be exercised. * * * The measures best adapted to this
185 end are for the legislature to determine, and courts cannot review its discretion. If the regulations operate in any respect unjustly or oppressively, the proper remedy must be applied by that body." (See also People *vs.* Buffalo Fish Co., 164 N. Y. 93.)

We have in the game laws a more extreme exercise of the legislative power to interfere with the ownership of property for the public good than is disclosed in the section under consideration.

We are of the opinion that this section is constitutional.

Section 344*b* provides that the possession by any person other than a public officer, of certain papers used in carrying on, promoting or playing the game commonly called "policy," is presumptive evidence of possession thereof knowingly and in violation of the provisions of section 344*a*.

The learned trial judge, in charging the jury, called their attention to this statute, and explained its application and limitations. To this charge no exception was taken, and the question of the constitutionality of this section, therefore, is not presented. In People *v.* Spiegel (143 N. Y., 107, 113) it was held that a party may waive the benefit of even a constitutional provision.

186 As this is a question of public importance, we will disregard the alleged waiver and consider the merits.

As already stated, this section creates no offense, but prescribes a rule of evidence, subject to certain limitations.

In People *v.* Cannon (139 N. Y., 32, 42, 43), this court said: "It is said the legislature can create and define a crime, but it canot declare what shall be *prima facie* evidence of its commission. Whether the crime as defined by the legislature has been committed by the accused is a question for the court and jury, and it is claimed that no direction to the court or jury as to what shall be considered *prima facie* proof can be given by the legislature. * * * The legislature of this State possesses the whole legislative power of a people except so far as such power may be limited by our constitution. (Bank of Chenango *v.* Brown, 26 N. Y., 467.) The power to enact such a provision as that under discussion is founded upon the jurisdiction of the legislature over rules of evidence both in civil and criminal cases. This court has lately had the question before it. (Board of Excise Comm'rs *v.* Merchant, 103 N. Y., 143.) * * * It cannot be disputed that the courts of this and other States are

committed to the general principle that even in criminal
187 prosecutions the legislature may, with some limitations, enact that when certain facts have been proved they shall be *prima facie* evidence of the existence of the main facts in question." This principle has been approved in a number of States.

The legislature, in the section under consideration, has gone a step further and provided that the possession by any person, other than a public officer, of the various papers and writings used in carrying on, promoting or playing the game commonly called "policy" is presumptive evidence of possession thereof knowingly and in violation of the provisions of section 344*a*. In other words the legislature has cast the burden of proof upon the person who has in his possession these incriminating papers. The fullest opportunity is afforded him to rebut this statutory presumption. The exercise of this power is clearly within the constitutional limitations and calculated to aid the People in prosecuting persons engaged in this form of gambling.

The appellant, in discussing this section, raises the additional point that it is class legislation, for the reason that it excepts from its provisions public officers.

It is argued that a notary public is a public officer, and that he might be knowingly in possession of these papers used in
188 the game of policy with impunity. It is true, if we give a literal construction to the language of this section, that the statement is warranted; but the rule is that all statutes must be reasonably construed, and in this case it is obvious that the legislature intended to except those public officers who, in the discharge of their official duties, were necessarily, at times, the custodians of these papers. The section under consideration is clearly constitutional.

The appellant makes the further point, that the statute under which the defendant was sentenced to imprisonment for a term, the minimum of which shall be not less than one year, and the maximum shall be not more than one year and nine months, is unconstitutional.

Section 687*a* of the Penal Code was enacted in 1901, presumably in the interest of defendants who had never before been convicted of a felony. The fixing of a maximum and minimum sentence is to be considered in connection with the law relating to prisons. (Sections 74 to 83, Birdseye R. S. 3rd. ed. vol. 2, pp. 2737, 2738, 2739.) In brief it is provided (section 77) that the superintendent of State prisons shall cause to be kept a record of each prisoner therein confined upon an indeterminate sentence; and if it shall appear (section 78) to the board of commissioners of paroled prisoners *there* there is a reasonable probability that such prisoner will live and remain at liberty without violating the law, the board is permitted to release him on parole after service of the mini-
189 mum sentence; but until the expiration of the maximum term he is not absolutely discharged, and is liable to re-arrest if he violates his parole. This is a merciful exercise of legislative power

which has been repeatedly approved by the Supreme Court. This form of legislation has been sustained by the courts of many other States.

The provisions to which attention has already been called, relating to the release of paroled prisoners, remove some of the objections urged by the appellant. The legislation complained of is constitutional and in the interest of the defendant who stands before the court charged with a first offense.

The appellant in his final point argues that the court erred to the prejudice of the defendant in refusing to allow evidence as to the non-existence of a search warrant at the time the papers were removed from the office of the defendant.

We have already pointed out that the court will not take notice of the allegation that the possession of the papers offered in evidence on a criminal trial has been unlawfully acquired.

It follows that the questions asked of the witness Cuff were immaterial. The fact that an officer, engaged in the search of defendant's office for papers, testified that there was a search warrant does not vary the situation.

190 The judgment of conviction and the order appealed from should be affirmed.

Parker, Ch. J.; Gray, O'Brien, Haight, Martin and Vann, JJ. concur.

Judgment of conviction and order affirmed.

191 At a trial term, part I, of the supreme court, in and for the county of New York, held at the Criminal Court building, in the city of New York, borough of Manhattan, on the 17th day of November, in the year of our Lord one thousand nine hundred and three.

Present: Hon. Vernon M. Davis, justice.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, *against* ALBERT J. ADAMS, Appellant. } Order on Remittitur.

Whereas, heretofore, to wit: at a trial term, part I of the supreme court, in and for the county of New York, held at the Criminal Court building, in the borough of Manhattan of the said city, on the 14th day of April, 1903, the above-named appellant was in due form of law convicted by the verdict of a jury of a felony, to wit: the crime of knowingly having in his possession a writing, paper and document representing and being a record of a chance, share, and interest in numbers sold in what is commonly called a policy; whereupon, to wit; on the 21st day of April then next ensuing, it was considered by the said court and ordered and adjudged that the said appellant, for the felony aforesaid whereof he was convicted as aforesaid, be imprisoned in the State prison at hard labor for the

term of which the minimum shall not be less than one year, and the maximum of which shall be not more than one year and
192 nine months, and pay a fine of one thousand dollars.

And that he stand committed until the same be paid, not exceeding one day for each dollar of the fine imposed, from and after the termination of the said term of imprisonment.

And whereas, the appellant aforesaid, thereafter duly appealed from the said judgment to the appellate division of the supreme court of the State of New York for the first department.

And whereas, at a term of the appellate division of the said supreme court, held in and for the first department, to wit: at the court house thereof in the borough aforesaid, on the 7th day of July, in the year of our Lord one thousand nine hundred and three, the said judgment of this court was by the judgment of the said appellate division in all things affirmed.

And whereas, the appellant aforesaid thereafter duly appealed from the judgment of the said appellate division to the court of appeals of the State of New York.

And whereas, at a term of the said court of appeals, held at the capitol in the city of Albany, on the 11th day of November, in the year of our Lord one thousand nine hundred and three, the said judgment of the said appellate division was by the judgment of the said court of appeals in all things affirmed, and the record herein, and the proceedings in the said last-mentioned court upon the said appeal, were by the said judgment remitted to this court, there to be proceeded upon according to law, as by the remittitur of the said court of appeals now on file in this court, more fully appears.

193 Now, therefore, on reading and filing the said remittitur, and on motion of Wm. Travers Jerome, Esquire, district attorney, it is

Ordered, that the said judgment of the said court of appeals be and the same hereby is made the judgment of this court, and it is further

Ordered, that the said judgment of this court so appealed from as aforesaid and so affirmed, and the said judgment of the appellate division of the supreme court herein, be and the same are hereby directed to be enforced and carried into execution and effect.

Enter.

V. M. D., *J. S. C.*

194 [Endorsed:] New York supreme court New York county. The People of the State of New York against Albert J. Adams, appellant. Original. Order on remittitur. Wm. Travers Jerome, district attorney, Criminal Court building, borough of Manhattan, New York city. Due service of a copy of the within order and notice of — is hereby admitted. New York, ——, 190–, borough of Manhattan. —— ——, attorney for defendant. Filed November 17th, 1903.

195 The Supreme Court of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
against
ALBERT J. ADAMS, Appellant.

Now comes the said appellant and respectfully submits that in the record, proceedings and decision of the court of appeals of the State of New York, and the final judgment entered thereupon in the supreme court of the State of New York in the above entitled matter, there is manifest error in this, to wit:

First. That the court erred in holding that by the reception in evidence of the defendant's private papers seized in the raid of his premises against his protest and without his consent, which had no relation whatsoever to the game of policy, for the possession of papers used in connection with which said game the appellant was convicted, his constitutional right to be secure in his person, papers and effects against unreasonable searches and seizures was not violated, and he was also thereby not compelled to be a witness against himself in contravention of the fourth, fifth and fourteenth articles of amendment to the Constitution of the United States.

196 Second. That the court erred in holding that the statute section 344A and 344B of the Penal Code of the State of New York, under which the indictment against the plaintiff in error was found and his conviction was had, did not deprive him of rights, privileges or immunities secured to other citizens of the United States, and of said State of New York, nor of liberty or property without due process of law, nor of the equal protection of the laws in violation of section I of the fourteenth article of amendment to the Constitution of the United States

Third. That the court erred in affirming the judgment of conviction and in refusing to discharge the plaintiff in error from custody.

KELLOGG & ROSE,
Attorneys for Defendant-Appellant,
120 *Broadway, N. Y. City.*

197 [Endorsed:] New York supreme court. The People of the State of New York against Albert J. Adams Assignment of errors. Kellogg & Rose, att'ys for appellant 120 Broadway, New York. To clerk of the supreme court (criminal term) Filed Nov. 19, 1903 —— —— att'y.

198 Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
against
ALBERT J. ADAMS, Appellant.

To the honorable the Supreme Court of the United States:

The petition of Albert J. Adams, the above named defendant and appellant, respectfully shows:

That he is a citizen of the United States of America and that in the above entitled action on the 17th day of November 1903, final judgment was rendered against your petitioner by the supreme court of the State of New York, upon a decision of the court of appeals of the State of New York, the latter being the highest court of law or equity in the said State of New York, wherein it was adjudged that your petitioner was guilty of a violation of sections 344A and 344B of the Penal Code of that State, making it an offense for a person knowingly to have in his possession a writing, paper and document representing and being a record of a chance, share and interest in numbers sold in the game commonly called policy, and of knowingly having possession of papers and devices such as are commonly used in carrying on and playing such game.

199 That in and by such judgment rendered in pursuance of the decision of said court of appeals, it was adjudged that by the reception in evidence of the defendant's private papers, seized in a raid of his premises and which had no relation whatsoever to the game of policy, the defendant's constitutional right to be secure in his person, papers and effects against unreasonable searches and seizures was not violated, and that he was not also thereby compelled to be a witness against himself in contravention of the fourth, fifth and fourteenth articles of amendment to the Constitution of the United States, and it was also adjudged by said final judgment that the statutes of the State of New York, designated as sections 344A and 344B under which the indictment was found and the conviction was had, and wherein it was provided that any person "who "shall have in his possession knowingly any writing, paper or docu- "ment representing or being a record of any chance, share or in- "terest in numbers sold, drawn or to be drawn in what is commonly "called policy, * * * or any paper, drawing, articles, numbers, "device, policy slip or article of any kind such as is commonly used "in carrying on, promoting or playing the game commonly called "policy, * * * is a common gambler and punishable by im- "prisonment for not more than two years and in the discretion of "the court by a fine not exceeding one thousand dollars or both" and that "the possession by any person other than a public

200 "officer of any article, paper or document representing or be- "ing a record of any chance, share or interest in the numbers

"sold, drawn or to be drawn in what is commonly called policy or "in the nature of a bet, wager or insurance upon the drawing or "drawn numbers of any public or private lottery or any paper, print, "writing, numbers or device, policy slip or article of any kind such "as is commonly used in carrying on, promoting or playing the "game commonly called policy, is presumptive evidence of posses- "sion thereof knowingly," and in violation of the provisions of the Penal Code, were not unconstitutional in that thereby the defendant was not deprived of his liberty and property "without due process of law" in that they did not deprive the defendant of the equal protection of the laws in violation of section I of the fourteenth article of amendment to the Constitution of the United States, nor deprive him of the rights, privileges or immunities secured to other citizens of said State and of the United States, in violation of said amendment, all of which appears in the record upon and final order of said court of appeals, and the final judgment of said supreme court of the State of New York, entered thereupon, affirming the judgment of conviction against the petitioner herein, whereby manifest error has happened to the great damage of your petitioner.

Wherefore your petitioner prays for the allowance of a writ
201 of error from the supreme court of the United States to the supreme court of the State of New York and the judges thereof, to the end that the record in said matter may be removed into the Supreme Court of the United States and the error complained of by your petitioner may be examined and corrected, and said judgment reversed and your petitioner discharged.

And your petitioner will ever pray.

ALBERT J. ADAMS.

201½ UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Albert J. Adams, being duly sworn says that he is the petitioner above named.

That the foregoing petition is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

ALBERT J. ADAMS.

Sworn to before me this 18" day of November 1903.

[Seal of James Connaughton, Notary Public, Westchester County.]

JAMES CONNAUGHTON,
Notary Public in and for Westchester Co., N. Y.

202 [Endorsed:] Original. U. S. Supreme Court. The People of the State of New York against Albert J. Adams. Petition for writ of error. Kellogg & Rose, att'ys for appellant 120 Broadway, New York. To ——— ———, att'y. Received district attorney's office Nov. 21 1903.

Due and timely service of a copy of within petition for writ of error is hereby admitted.
Dated New York, Nov. 21st 1903.

WM. TRAVERS JEROME,
District Attorney for N. Y. County.
B.

203 Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
against
ALBERT J. ADAMS, Appellant.

The above entitled matter coming on to be heard, upon the petition of the appellant therein, for a writ of error from the Supreme Court of the United States to the supreme court of the State of New York, and upon examination of said petition, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the question presented in said matter,
It is ordered that a writ of error be and is hereby allowed to the supreme court of the State of New York from the Supreme Court of the United States, and that the bond presented by said petitioner be and the same hereby is approved.

R. W. PECKHAM,
Asso. Jus. Sup. Ct. U. S.

204 [Endorsed:] E. U. S. Supreme Court. The People of the State of New York against Albert J. Adams Original Order for writ of error. Kellogg & Rose, att'ys for appellant 120 Broadway, New York. To —— ——, att'y. Received district attorney's office Nov. 21 1903

Due and timely service of a copy of within order for writ of error is hereby admitted.
Dated New York, Nov'r 21st 1903.

WM. TRAVE-S JEROME,
District Attorney for N. Y. County.
B.

205 Know all men by these presents: That we Albert J. Adams as principal, and George Karsch as surety, are held and firmly bound unto the People of the State of New York, in the sum of five hundred (500_{00}^{00}$) dollars to be paid to the said obligees, their successors, representatives and assigns, to the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.
Sealed with our seals and dated this 18th day of November, A. D. 1903.

Whereas the above named plaintiff in error hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the supreme court of the State of New York on the order of the court of appeals of that State,

Now therefore the condition of this obligation is such that if the above named plaintiff in error shall prosecute his said writ of error to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

ALBERT J. ADAMS. [L. S.]
GEORGE KARSCH. [L. S.]

Signed, sealed and delivered in the presence of

{Seal of James Connaughton, Notary Public, Westchester County.}

JAMES CONNAUGHTON.

[Seal of John F. Reed, Notary Public, New York Co., N. Y.]

JOHN F. REED.
As to G. K.

206 UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

On this 18th day of November 1903, before me personally appeared Albert J. Adams to me known to be the person described in and who executed the foregoing bond and acknowledged that he executed the same as his free act and deed.

{Seal of James Connaughton, Notary Public, Westchester County.}

JAMES CONNAUGHTON,
Notary Public in and for Westchester Co., N. Y.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

On this 18th day of November, 1903, before me personally appeared George Karsch to me known to be the person described in and who executed the foregoing bond and acknowledged that he executed the same as his free act and deed.

[Seal of John F. Reed, Notary Public, New York Co., N. Y.]

JOHN F. REED,
Notary Public, New York County, # 95.

207 [Endorsed:] E. U. S. Supreme Court. The People of the State of New York against Albert J. Adams Original. Bond on writ of error. Kellogg & Rose, att'ys for appellant 120 Broadway, New York. To ——— ———, att'y. Within bond approved. November 20th 1903 R. W. Peckham, justice Supreme Court. Received district attorney's office Nov. 21 1903.

Due and timely service of a copy of within bond on writ of error is hereby admitted.

Dated New York, Nov'r 21st 1903.

WM. TRAVERS JEROME,
District Attorney for N. Y. County.
B.

208 THE UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of New York, Greeting:

Because in the record and proceedings as *alleged* in the rendition of the judgment of a plea which is in the said supreme court of the State of New York before you, or some of you, a judgment was rendered on an order of the court of appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had in a criminal prosecution by The People of the State of New York against Albert J. Adams, wherein was drawn in question the right to the reception in evidence against him of the defendant's private papers seized in a raid of his premises, against his protest and consent, which had no relation whatsoever to the game of policy, for knowingly having in his possession, papers connected with such game, he was indicted and convicted, and wherein was also drawn in question the validity of the statute under which the indictment against him was found on the ground of its being repugnant to the Constitution of the United States, and wherein the decision was against the title, right, privilege and immunity specially set up and claimed under the fourth, fifth and fourteenth articles of amendment to the Constitution of the
209 United States, and thereby manifest error hath happened to the great damage of the said Albert J. Adams as by his petition appears, and we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ so that you have the same at Washington, within thirty days from the date hereof in the said Supreme Court to be then and

there held that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States, should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, the 20th day of November, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
R. W. PECKHAM,
Asso. Jus. Sup. Ct. U. S.

210 [Endorsed:] E. U. S. Supreme Court. The People of the State of New York against Albert J. Adams. Original. Writ of error. Kellogg & Rose, att'ys for appellant 120 Broadway, New York. To ——— ———, att'y. Rec'd county clerk's office New York Nov. 21 1903. Received district attorney's office Nov. 21 1903.

Due and timely service of a copy of within writ of error is hereby admitted.

Dated New York, Nov'r 21st 1903.

WM. TRAVERS JEROME,
District Attorney for N. Y. Co.
B.

211 UNITED STATES OF AMERICA, ss:

To the People of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of New York wherein Albert J. Adams is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 20th day of November, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

212 [Endorsed:] E. Due and timely service of a copy of within citation is hereby admitted. Dated, New York, Nov'r 21st, 1903. Wm. Travers Jerome, district attorney for N. Y. county. B. Received clerk's office court general sess. Nov. 24, 1903 Received district attorney's office Nov. 21, 1903

213 The return of the judges of the supreme court of the State of New York in and for the county of New York to the writ of error issued out of the Supreme Court of the United States on the 20th day of November, 1903.

1. The original writ.
2. The original assignment of errors.
3. The original petition for writ of error.
4. The original order for writ of error.
5. The original bond on writ of error.
6. The original citation,
7. A true copy of the remittitur from the court of appeals of the State of New York, now on file in the clerk's office of the supreme court of the State of New York in and for the county of New York.
8. The original order on said remittitur, from the said court of appeals.
9. A true copy of the opinion of the court of appeals, as published in the official law journal of the county of New York.

We certify, under the seal of our said court, to the honorable the justices of the Supreme Court of the United States, the annexed record and proceedings had in said criminal prosecution by The People of the State of New York against the said Albert J. Adams.

By the court,

[Seal New York.]

THOS. L. HAMILTON,
Clerk of the Supreme Court of the State of New York in and for the County of New York.

This return to writ of error correct

HENRY WELSH,
Assistant Special Deputy to the Clerk of the County of New York.

214 [Endorsed:] Supreme court in and for the county of New York The People of the State of New York against Albert J. Adams. Return to writ of error

Endorsed on cover: File No. 19,155. New York supreme court. Term No. 504. Albert J. Adams, plaintiff in error, *vs.* The People of the State of New York. Filed December 8th, 1903. File No. 19,155.

FILE COPY.

3179

Office Supreme Court U.S.
FILED
DEC 16 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States,

OCTOBER TERM, 1903.

ALBERT J. ADAMS,

Plaintiff in Error,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Defendant in Error.

No. 504.

Now comes Albert J. Adams, the plaintiff in error, and moves that upon the annexed petition and the transcript of the record in the above-entitled cause sent to this Court from the Supreme Court of the State of New York, New York County, this cause be advanced for a hearing before this Court and assigned for argument on the earliest day convenient to the Court during the present term.

SUPREME COURT OF THE STATE OF NEW YORK,

OCTOBER TERM, 1903.

ALBERT J. ADAMS,
Plaintiff in Error,
against
THE PEOPLE OF THE STATE OF NEW YORK,
Defendant in Error.
No. 504.

Please take notice, that the foregoing motion will be presented to the Supreme Court of the United States, at a Term thereof, to be held at the Capitol, in the City of Washington, on December 16th, 1903, at the opening of the Court, or as soon thereafter as counsel may be heard.

Dated New York, December 10th, 1903.

Yours, etc.,

L. LAFLIN KELLOGG,
Attorney and Counsel for Plaintiff in Error,
120 Broadway,
New York City.

To

Hon. WILLIAM TRAVERS JEROME,
District Attorney of New York County,
Attorney for Defendant in Error.

In the Supreme Court of the United States,

OCTOBER TERM, 1903.

ALBERT J. ADAMS, Plaintiff in Error, against THE PEOPLE OF THE STATE OF NEW YORK, Defendant in Error.	No. 504.

MOTION TO ADVANCE.

The plaintiff in error moves the Court to advance this case and assign it for argument on the earliest day convenient to the Court during the present term for the following reasons:

1. That on the 16th day of January, 1902, at the Court of General Sessions of the Peace in and for the County of New York, a bill of indictment was found by the Grand Jury of the County of New York, charging in several counts the defendant, Albert J. Adams, with the crime of knowingly having in his possession a writing, paper and document, representing and being a record of a chance, share and interest in numbers sold in what is commonly called policy, and of knowingly having in his possession, a paper, writing, print, numbers, device, policy slip and articles of a kind such as is commonly used in carrying on, promoting and playing the game commonly called policy in violation of Section 344 A of

the Penal Code of the State of New York. That the defendant was arrested in the State of New York under a warrant issued on said indictment, and on the 14th day of February, 1902, was arraigned to plead thereto, and did on said day plead "Not Guilty" thereto and demanded a trial thereon.

2. That on April 14th, 1903, in due course, a trial was had upon said indictment in the New York Supreme Court, Trial Term, Part I, Criminal Branch, before the Hon. Francis M. Scott, a Justice of said Court, and a Jury, which trial resulted in a verdict of guilty against the defendant, and he was sentenced to be imprisoned in the State prison at hard labor for the term of which the minimum shall be not less than one year, and the maximum of which shall be not more than one year and nine months, and to pay a fine of one thousand dollars, and to stand committed until the same was paid, not exceeding one day for each dollar of the fine imposed from and after the termination of the said term of imprisonment, and that pursuant to such imprisonment and since the 27th day of April, 1903, the defendant has been in actual custody under said sentence, in the State Prison at Sing Sing, in the State of New York, and is now actually confined therein.

3. That upon the trial of the defendant his private papers, seized in a raid of his premises and which had no relation whatsoever to the game of policy, were received in evidence against him, notwithstanding his protest, objection and exception that thereby his constitutional right to be secure in his person, papers and effects against unreasonable searches and seizures would be violated, and that he would also thereby be compelled to be a witness against himself in contraven-

tion of the 4th, 5th and 14th articles of amendment to the Constitution of the United States.

4 That from the judgment of conviction the defendant appealed to the Appellate Division of the Supreme Court, in the First Department of the State of New York, and as grounds of his appeal, and as reasons why the judgment so rendered should be reversed, the defendant urged, among other things, that by the reception in evidence of his private papers aforesaid, his rights secured to him both by the State Constitution and Bill of Rights, and the Federal Constitution, had been violated; and further, that the statutes of the State of New York, designated as Section 344 A and 344 B, under which the indictment was found and the conviction was had, were unconstitutional in that they provided that the possession by any other person other a public officer of any article, paper or document, representing or being a record of any chance, share, or interest in the numbers sold or to be drawn in what is commonly called policy, or in the nature of a bet, wager, or insurance upon the drawing or drawn numbers of any public or private lottery, or any paper, print, writing, numbers or device, policy slip or article of any kind, such as is commonly used in carrying on, promoting or playing the game commonly called policy, should be presumptive evidence of possession thereof knowingly, and deprived the defendant of his liberty and property without due process of law, and denied to him the equal protection of the laws in violation of Section I of the 14th Article of Amendment to the Constitution of the United States, and deprived him of the rights, privileges and immunities secured to other citizens of the State of New York and of the United States.

5. That the defendant's contentions were overruled,

and the judgment of conviction affirmed by the said Appellate Division, in the First Department, and judgment of affirmance entered.

6. That from said judgment of affirmance the defendant appealed to the Court of Appeals of the State of New York, which is the highest court of law or equity in the said State of New York, and before said Court the defendant again urged that his constitutional rights had been violated in the respects above mentioned, but the said Court of Appeals rendered its decision, wherein it decided that by the reception in evidence of the defendant's private papers aforesaid, his constitutional right to be secure in his person, papers and effects against unreasonable searches and seizures was not violated, and that he was not also thereby compelled to be a witness against himself in contravention of the 4th, 5th and 14th Articles of Amendment to the Constitution of the United States, and that the statutes of the State of New York, under which the indictment was found and the conviction was had, were not unconstitutional, in that thereby the defendant was not deprived of his liberty and property without due process of law; nor was he deprived of the equal protection of the laws nor of the rights, privileges or immunities secured to other citizens of the State of New York and of the United States, and directed that the judgment of the Appellate Division be affirmed.

7. That on the 17th day of November, 1903, pursuant to the decision and order of the Court of Appeals, final judgment was rendered against the defendant by the Supreme Court of the State of New York affirming said judgment of conviction.

8. That on the 20th day of November, 1903, a writ of error to this Court, upon application of the defendant,

was allowed by MR. JUSTICE PECKHAM, and pursuant to said writ of error and the citation issued thereon, a return has been made by the Supreme Court of the State of New York to this Court containing a record of the proceedings whereon said final judgment of conviction was rendered, and said return was filed in the office of the Clerk of this Court on the 7th day of December, 1903.

9. That the defendant is upwards of sixty years of age and is in ill health, being now, by the order of the authorities in charge of Sing Sing prison, confined in the hospital ward.

That there still remains a period of about four months before the expiration of the minimum term for which sentence was imposed, and a period of about thirteen months before the expiration of the maximum term of said sentence.

10. That the questions involved in this case, especially the one relating to the reception in evidence of the defendant's private papers, are questions which should be reviewed by this Court, as they involve not only the rights and privileges of this defendant under the Constitution, but also the rights and privileges of other persons accused of crime. That the reception in evidence of the defendant's private papers seems to be in direct conflict with the decision by this Court in the case of BOYD *v.* UNITED STATES, 116 U. S., page 616, wherein it was said that the 4th and 5th amendments to the Constitution of the United States prevented the seizure of a man's private papers for the purpose of discovering evidence of crime against him, and constituted an unlawful seizure within the meaning of those provisions, and that he was thereby also compelled to be a witness against himself in contravention thereof.

That a similar question was presented to this Court in the case of MALLET *v.* STATE OF NORTH CAROLINA, 181 United States, 589, wherein this Court refused to decide the question on the ground that it had not been properly presented and passed upon in the State courts, whereas in the case at bar the question is distinctly raised and was expressly passed upon by all the courts before which the proceedings were brought.

CONCLUSION.

That the actual confinement of the defendant and his precarious condition of health and the importance of the questions involved, are sufficient, we submit, to show the absolute necessity for advancing this case for hearing at the earliest possible time, and unless advanced, the defendant, if he lives, will be compelled to serve out the full term of imprisonment imposed upon him before a hearing can be had by this Court, and the rights of the defendant will be, and the rights of other persons accused of crime in the State of New York may be, seriously impaired and prejudiced by delay in the decision of the questions presented.

L. LAFLIN KELLOGG,
ABRAM J. ROSE,
Counsel for Plaintiff in Error.

Supreme Court of the United States,

OCTOBER TERM, 1903.

ALBERT J. ADAMS,
Plaintiff in Error,
against
THE PEOPLE OF THE STATE OF NEW YORK,
Defendant in Error.

No. 504.

BRIEF FOR PLAINTIFF IN ERROR.

Statement.

This case comes before this Court on writ of error to the Supreme Court of the State of New York, to review a judgment of conviction against the plaintiff in error (the defendant below) entered upon an order of the Court of Appeals of that State, affirming a judgment of the Appellate Division of the Supreme Court, in the First Department, of that State, affirming a judgment entered upon a verdict rendered upon a trial before the Supreme Court, finding him guilty of *knowingly having in his possession a writing, paper and document representing and being a record of chance, share and interest in numbers sold in what is commonly called policy, and of having in his possession papers and devices such as are commonly used in carrying on*

and playing that game in violation of Section 344a of the Penal Code of the State of New York.

See Indictment, pages 2 and 3.
" Extract of Minutes, page 5.
" Judgment of Affirmance, page 109.
" Order on Remittitur, pages 119-120.
" Petition for Writ of Error, pages 122-123.
" Writ of Error, pages 126-127.

Indictment.

The indictment contains two counts, and charges as follows:

" The Grand Jury of the County of New " York, by this indictment, accuse Albert J. " Adams of the crime of knowingly having " in his possession a writing, paper and docu- " ment representing and being a record of " chance, share and interest in numbers sold " in what is commonly called policy, com- " mitted as follows:

" The said Albert J. Adams, late of the " Twentieth Ward of the Borough of Man- " hattan, of the City of New York, in the " County of New York aforesaid, on the 12th " day of December, in the year of our Lord " one thousand nine hundred and one, at the " ward, borough and county aforesaid, felo- " niously *did knowingly have in his posses- " sion a certain writing, paper and docu- " ment representing and being a record of a " chance, share and interest in numbers sold " in what is commonly called policy*, which " said writing, paper and document is as fol- " lows, that is to say: Manifold books and " sheets, being records of numbers sold and " lottery policies sold, commonly known as

" a manifold book, a more particular descrip-
" tion whereof is to the Grand Jury afore-
" said unknown, and cannot now be given,
" against the form of the statute in such
" cases made and provided and against the
" peace of the People of the State of New
" York and their dignity.

" SECOND COUNT.

" And the Grand Jury aforesaid, by this
" indictment, further accuse the said Albert
" J. Adams of the crime of knowingly hav-
" ing in his possession a paper, writing, print,
" numbers, device, policy slip and articles of
" a kind such as is commonly used in carry-
" ing on, promoting and playing the game
" commonly called policy, committed as fol-
" lows:

" The said Albert J. Adams, late of the
" ward, borough and county aforesaid, after-
" wards, to wit, on the day and in the year
" aforesaid, at the ward, borough and county
" aforesaid, feloniously *did knowingly have*
" *in his possession a paper, print, writing,*
" *numbers, device, policy slip and articles of*
" *a kind such as is commonly used in carry-*
" *ing on, promoting and playing the game*
" *commonly called policy,* which said paper,
" print, writing, numbers, device, policy slip
" and articles aforesaid is as follows: Mani-
" fold books and sheets, being records of num-
" bers sold and lottery policies sold, and com-
" monly called manifold books, policy slips,
" and being numbers alleged to have been
" drawn, and policy lists, being alleged rec-
" ords of alleged drawings, a more particular
" description whereof is to the Grand Jury
" aforesaid unknown, and cannot now be
" given, and against the form of the statute
" in such case made and provided, and against

" the peace of the People of the State of New " York and their dignity."

See Indictment, pages 2 and 3.

To this indictment the defendant entered a plea of " Not guilty."

See Plea, page 4.

By order of the Supreme Court, the indictment was removed from the Court of General Sessions into the Supreme Court for trial.

See Order of Removal, page 4.

The Statutes.

The provisions of the Penal Code under which the indictment was found and the conviction was had are as follows:

" 344a, KEEPING PLACE FOR PLAYING POL- " ICY, ETC. A person who keeps, occupies or " uses, or permits to be kept, occupied or " used, a place, building, room, table, es- " tablishment or apparatus for policy playing, " or for the sale of what are commonly " called 'lottery policies,' or who delivers " or receives money or other valuable con- " siderations in playing policy, or aiding " in the playing thereof, or for what is " commonly called a 'lottery policy,' or " any writing, paper or document, in the " nature of a bet, wager or insurance upon " the drawing or drawn numbers of any " public or private lottery, *or who shall have* " *in his possession knowingly any writing,* " *paper or document, representing or being* " *a record of any chance, share or interest* " *in numbers sold, drawn, or to be drawn,* " *or in what is commonly called 'policy,'* or

" in the nature of a bet, wager or insurance
" upon the drawing or drawn numbers of
" any public or private lottery, *or any*
" *paper, print, writing, device, policy slip or*
" *article of any kind, such as is commonly*
" *used in carrying on, promoting or playing*
" *the game commonly called policy*, or who
" is the owner, agent, superintendent, janitor
" or caretaker of any place, building or room
" where policy playing, or the sale of what
" are commonly called 'lottery policies,' is
" carried on with his knowledge, or after
" notification that the premises are so used,
" permits such use to be continued, or who
" aids, assists, or abets in any manner in
" any of the offenses, acts or matters herein
" named, *is a common gambler and punish-*
" *able by imprisonment for not more than two*
" *years, and in the discretion of the Court by*
" *a fine not exceeding one thousand, or both.*"

See Penal Code, Section 344a.

" Section 344b. POSSESSING POLICY SLIPS,
" ETC. The possession by any person, *other*
" *than a public officer*, of any writing, paper
" or document representing or being a record
" of any chance, share or interest in num-
" bers sold, drawn or to be drawn, or in
" what is commonly called policy, or in the
" nature of a bet, wager or insurance upon
" the drawing or drawn numbers of any pub-
" lic or private lottery, or any paper, print,
" writing, numbers or device, policy slip, or
" article of any kind, such as is commonly
" used in the carrying on, promoting or play-
" ing the game commonly called policy, *is*
" *presumptive evidence of possession thereof,*
" *knowingly and in violation of the provi-*
" *sions of Section 344a.*"

See Penal Code, Section 344b.

Facts.

On December 12, 1901, Chief County Detective, George P. Hammond, of the District Attorney's office, and a Detective Sergeant by the name of Rhinders, made a raid on a real estate office occupied by the firm of Pocher & Company, at No. 40 West 34th Street, in the City of New York. In the rear part of the premises raided was a room with a glass door marked "Mr. Adams." In this room or office, among other things, was a trunk and three tin boxes and an ordinary office desk.

While the raid was on, it is claimed, the defendant entered the office of Pocher & Company and proceeded to the room bearing his name on the door. As he approached, Rhinders took out what he stated was a search warrant, and started to read it, whereupon the defendant said, "I warn you not to "touch anything in this room. There is nothing "here belongs to me." (See Case, page 13.)

Thereupon Chief Detective Hammond picked up a letter-book having the letters "A. J. A." upon it, and said to the defendant, "How about this, "Adams? This has 'A. J. A.' upon it?" to which inquiry the defendant made no reply. (See Case, page 13.)

Hammond then suggested to Rhinders that they better go slow, and that it would be a good idea to get some one to advise them as to the proper method to pursue, and suggested that they go back and see Mr. Frank Moss, or some one who was capable of advising them. This suggestion was adopted, and two police officers, who had accompanied the raiding party, were left in charge of the office.

Hammond and Rhinders, accompanied by the defendant, drove to 366 West 31st Street, and the defendant was turned over to a detective sergeant there in charge.

After consulting with Mr. Frank Moss, the raid-

ing party, which was now composed of Mr. Moss, Captain Goddard, of the Anti-Policy Society, Mr. Shortridge, secretary to District Attorney Philbin, a Mr. Wells, County Detective Hammond and Detective Sergeant Rhinders, returned to Pocher & Company's office, in West 34th Street, and immediately proceeded to search the place.

The trunk, which was in the rear part of the room, was broken open with a short crowbar, and in it was found a number of rolls of paper wrapped in newspaper wrappings, and which, it is claimed, were policy "manifold sheets," besides numerous other papers of a concededly private character.

The papers were returned to the trunk, and the three tin boxes, which were also locked and had to be forced open, were searched and were found to contain papers, some of which, it was claimed, related to the rolls of paper in the newspaper wrappings found in the trunk, and others of which were concededly of a purely private character, relating generally to the business and personal affairs of the defendant. These also were returned to the boxes, and the raiders then proceeded to open the desk. This part of the search was conducted by Mr. Moss personally. In the desk, as in the tin boxes, were some papers and memoranda, which, it was claimed, related to the rolls found in the trunk, but it also contained papers of a purely private and a personal character.

All of the papers found in the desk were taken out and put into a waste-paper basket which stood alongside.

The learned District Attorney has made a digest of the contents of the trunk, the tin boxes and the desk, and it is so complete and comprehensive that we have taken the liberty to incorporate the statement in our brief.

Contents of Trunk.

In the trunk there were found 35 rolls (Exhibit 11, C. E. inc., 141–144 inc., 146, 150–168 inc., 170, 172, 173, 144c, 142d), of which seven were wrapped in newspaper wrappings endorsed in what was claimed to be defendant's handwriting (Exhibits 11a, Ca, Da, 142a, 143a, 144a, 146a; see pages 37–38, 55, 72). There were found there also a number of envelopes claimed to be endorsed in his hand, and containing, either in the endorsement itself or in the contents, reference to matters in which the defendant was said to be interested (Sapphire Exhibit 48, see Exhibit "Z" (page 107).

There was found there also a letter addressed to him (Exhibit G), a number of miscellaneous papers in his handwriting (Exhibits 33, 32, 34, 39, 40, 41, 42; see handwriting testimony, pages 36, 71), and a bill proved to have been rendered to him by the Hotel Savoy (Exhibit M, see page 50).

Contents of Desk.

In the desk were found a number of books, letters and other papers, all of which were offered in evidence by the prosecution. Many of these bore the alleged handwriting of the defendant, and their contents related to affairs in which he was found to have had a business interest. Some of these books and papers contained memoranda said to be in the defendant's handwriting, relating to matters referred to by papers found in the trunk, and some of the books found in the desk contained a schedule of accounts claimed to relate to the policy business, represented by the "policy manifolds" found in the trunk.

People's Exhibits 23, 24, 25, 26, 27, 28, 29 and 30 found in the desk (page 21) were small memorandum books. All of these books were claimed to contain statements and memoranda, all in defendant's handwriting (pages 34 and 71).

Pages 25 and 27 of Exhibits 23, 24, 25, 26, 27 and 28 contain an alleged partial list, in the defendant's alleged handwriting, of the policy shops, the names and number of which appear in the "manifold sheets" found in the trunk, particularly that roll of sheets marked People's Exhibit D (page 64).

One of these books (People's Exhibit 30) bore an endorsement, "Brewery, College Point," said to be in defendant's handwriting (page 34). The People proved that the defendant was a director in the "Karsch Brewing Company," which company had its place of business at College Point, Long Island (page 39, and People's Exhibits "X" and "Y"). Schedules of real estate accounts between the defendant and Pocher & Company were found in this desk (People's Exhibits 6, 7 and 8, page 22). An envelope claimed to be endorsed in defendant's handwriting as follows: "Policy Bill, Herald, January 29, 1900" (page 35), was also found there (People's Exhibit 49, page 23), and in the trunk was found an envelope (People's Exhibit 32, page 16), upon which appeared the words "P. Law," also said to be in defendant's handwriting (page 35). A piece of paper was found in the desk bearing the word "Sapphire" (People's Exhibit 108), and in the trunk was found a communication relating to the Sapphire Match Company, enclosed in an envelope (People's Exhibit 48, page 16). On the envelope was written the word "Sapphire" in defendant's handwriting (page 71), and the People proved that the defendant was a director in the Sapphire Match Company (People's Exhibit "Z," page 39).

Papers bearing the letter-heads of McLain, Simpson & Company were found in the desk (People's Exhibit 181, page 22), while other papers were found in the trunk bearing the words, "McLain, Simpson & Company," written in defendant's handwriting (People's Exhibit 45, pages 72 and 36).

Contents of Tin Boxes.

In these boxes were a number of papers, all of which were offered in evidence by the prosecution, and many of which bore various memoranda in words and figures claimed to be in the handwriting of the defendant. Among the papers found in the boxes were a number of envelopes and letters addressed to "Mr. A. J. Adams" (see People's Exhibits 112, 113, 120, 122, 132, N, O, P, R, R, S, pages 25 to 27, inclusive).

There was also found in the tin boxes a memorandum of names mentioning, among others, J. W. Cody & Company and G. F. Balmer (see People's Exhibit 114, page 26).

Balmer testified that he was interested in J. W. Cody & Company, as was also the defendant (page 78).

There was also found in one of these boxes a lease (People's Exhibit T) to Albert J. Adams of certain rooms in the Hotel Netherlands (pages 27, 54). The People proved that during the time mentioned in the lease defendant Adams lived at the Hotel Netherlands in New York City (page 54).

There was also found in one of the boxes a white envelope (People's Exhibit 134) bearing the words "A. R. Baker, report" (page 25). These words were claimed to have been written by the defendant (page 37).

There was a memorandum in the red book (People's Exhibit 23), aforedescribed as having been found in the desk, relating to A. R. Baker (page 37).

A paper was taken from one of the tin boxes (People's Exhibit 121, page 26) containing memoranda referring, among other things, to A. R. Baker, McLain-Simpson papers, brewery papers, Cody matter and the policy bill. Papers referring to the same matters were described above to have been taken from the desk and the trunk in the same room.

There were a number of other papers taken from the tin boxes, the contents of which bore the alleged handwriting of the defendant. Such papers were People's Exhibits 112, 115, 119, 120, 122, 124 and 132 (see page 37).

After the ransacking had been completed, the trunk, the three tin boxes and the wastepaper basket, with their respective contents, were carried down to a carriage in front of the premises and taken down to the Criminal Court Building.

A couple of days afterwards the trunks and boxes were opened in the District Attorney's office and the contents, together with the papers in the waste-paper basket, were marked for identification (see Case, pages 15–16).

On January 16th, 1902, after the raid, and upon the testimony of County Detective Hammond, the indictment against this defendant was found (see Case, page 3).

It was solely upon the evidence furnished by the papers and documents obtained as a result of the raid that the defendant was convicted.

NOT A SCINTILLA OF EVIDENCE FROM ONE END OF THE RECORD TO THE OTHER TENDING TO SHOW THAT THE DEFENDANT EVER ENGAGED IN THE GAME OF POLICY, OR THAT ANY OF THE PAPERS FOUND HAD BEEN DIRECTLY USED IN THE PLAYING THEREOF, CAN BE FOUND, BUT THE PROOF WAS WHOLLY OF A CIRCUMSTANTIAL CHARACTER.

For the purpose of proving that the rolls in the newspaper wrappings were policy "manifold sheets," persons claiming to be familiar with the game were called, who testified as to the method of play, and that in their opinion the rolls of paper were policy "manifold sheets."

See testimony of Hammond, pages 19–20.
" " " Reardon, page 55.

To show the possession thereof knowingly by the defendant it was claimed that the handwriting endorsed on the wrappers was his, and that the room in which they were found was his private office.

To prove these facts all of the contents of the trunk, tin boxes and desks were offered in evidence against the protest and objection of the defendant, that many of them were concededly of a strictly private character, having no relation whatsoever to the game of policy, and that their reception in evidence would be in violation of his constitutional rights, protecting him against unreasonable searches and seizures and against compelling him to give evidence against himself (see Case, page 18).

After the reception of the papers in evidence, persons alleged to be familiar with the defendant's handwriting were called as witnesses, who, upon being shown papers concededly of a private nature, testified that they contained handwriting of the defendant, and the papers so identified, against the defendant's objection and exception, were thereupon offered in evidence by the prosecution as so-called standards of comparison.

To make the chain complete, an expert in handwriting was then called, who swore that the handwriting on the private papers so identified, as well as on numerous others of the private papers and documents, was the same handwriting as on the wrappers containing the alleged "manifold sheets." This evidence, supplemented by testimony to the effect that the office in which the trunk, tin boxes and desk were found was the private office of the defendant, was the entire evidence upon which the defendant was found guilty.

It was in no way shown, nor was it even claimed, that the game of policy had ever been played on the raided premises, nor, as we have said, was there any evidence whatsoever to connect the defendant directly with that game, or with the possession of the so-called "manifold sheets."

It was, on the other hand, expressly shown that persons other than the defendant had daily and common access to the room in which the search was made and the papers seized, it being used daily by Pocher & Company for closing real estate deals and for other purposes (see Case, pages 74-75).

It was also positively testified that no gambling game of any nature or character had ever been carried on in the premises (see Case, page 75).

At the time of the raid the manager of Pocher & Company demanded to know by what right the search was being conducted, and the only answer he got was that he would be arrested if he did not stop fooling with them, and when he insisted, the raiding party said: "We will show you by arresting you," and excluded him from the room (see Case, page 77).

Upon the trial no search warrant was produced, but when the defendant offered testimony to the effect that none had ever existed, he was not allowed to do so; and when he demanded the production of the search warrant, the District Attorney replied that the paper had disappeared (see Case, pages 81-82).

Not only were the defendant's constitutional rights violated by the reception of his private papers and documents unlawfully seized, and used in evidence against his will, but we will also contend that the statute under which he was convicted is wholly unconstitutional.

By the terms of that act the mere fact of possession of a paper used in the game of policy, or the possession of a paper of a kind such as is commonly used in that game, is made *prima facie* evidence of guilt, whether or not the person in whose possession they were found had himself either used, or intended to use, them in connection with that game, *and even without actual knowledge on his part of the character of the papers in his possession.*

Moreover, the statute makes the simple possession of an article relating to or representing a chance or share *in a game already played* a criminal offense. After a game of policy has been played, the articles relating to that special game, or used in connection therewith, become absolutely valueless so far as participation in any further game is concerned. The articles used, according to the testimony, are simply bits of paper with combinations of figures written on them.

Nevertheless, possession of these pieces of paper, of a nature and kind such as are in universal use, and in themselves entirely innocuous, is made by the statute *prima facie* evidence of a crime, and brands the holder a common gambler.

In addition the statute makes the possession *prima facie* evidence of guilt *only in the case of a private citizen.*

Any person occupying the position of a public officer, whether or not his position in the public service is such as to entitle him, in his official capacity, to the possession of such papers, is excepted from the presumption of guilt which attaches to every private citizen.

We will contend that for these reasons the statute is unconstitutional.

Upon the evidence adduced the case was sent to the jury, who, after returning twice—the first time stating that they could not agree, and the second time for further instructions from the Court as to the amount of proof necessary to convict—returned a verdict of guilty.

See Case, pages 90-93.

Upon this finding the defendant was sentenced to imprisonment in the State Prison, at hard labor, for the term, the minimum of which shall not be less than one year and the maximum of which

shall not be more than one year and nine months and to pay a fine of $1,000.

See Case, page 5.

Under this sentence the plaintiff in error is now, and since April 27th, 1903, has been, confined in the State Prison at Sing Sing.

From the judgment of conviction the defendant appealed to the Appellate Division of the Supreme Court, in the First Department, where the case was heard before four judges, and by them the judgment was affirmed.

The opinion of the Appellate Division is reported in

People *v.* Adams, 85 App. Div., 390.

From the judgment of affirmance the plaintiff in error appealed to the Court of Appeals, where the judgment was also affirmed.

The opinion of the Court of Appeals is reported in

People *v.* Adams, 176 N. Y., 351.

A writ of error to review the judgment of the Court of Appeals was granted by MR. JUSTICE PECKHAM, and pursuant to such writ, the case now comes before this Court for review.

Assignment of Errors.

The errors assigned are:

First.—THAT THE COURT ERRED IN HOLDING THAT BY THE RECEPTION IN EVIDENCE OF THE DEFENDANT'S PRIVATE PAPERS SEIZED IN THE RAID OF HIS PREMISES, AGAINST HIS PROTEST AND WITHOUT HIS CONSENT, WHICH HAD NO RELATION WHATSOEVER TO THE GAME OF POLICY, FOR THE POSSESSION OF

PAPERS USED IN CONNECTION WITH WHICH SAID GAME HE WAS CONVICTED, HIS CONSTITUTIONAL RIGHT TO BE SECURE IN HIS PERSON, PAPERS AND EFFECTS AGAINST UNREASONABLE SEARCHES AND SEIZURES, WAS NOT VIOLATED, AND THAT HE WAS ALSO THEREBY NOT COMPELLED TO BE A WITNESS AGAINST HIMSELF IN CONTRAVENTION OF THE FOURTH, FIFTH AND FOURTEENTH ARTICLES OF AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Second.—THAT THE COURT ERRED IN HOLDING THAT THE STATUTE, SECTIONS 344A AND 344B OF THE PENAL CODE OF THE STATE OF NEW YORK, UNDER WHICH THE INDICTMENT AGAINST THE PLAINTIFF IN ERROR WAS FOUND, AND HIS CONVICTION WAS HAD, DID NOT DEPRIVE HIM OF RIGHTS, PRIVILEGES AND IMMUNITIES SECURED TO OTHER CITIZENS OF THE UNITED STATES AND OF SAID STATE OF NEW YORK, NOR OF LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW, NOR OF THE EQUAL PROTECTION OF THE LAWS IN VIOLATION OF SECTION I OF THE FOURTEENTH ARTICLE OF AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Third.—THAT THE COURT ERRED IN AFFIRMING THE JUDGMENT OF CONVICTION, AND IN REFUSING TO DISCHARGE THE PLAINTIFF IN ERROR FROM CUSTODY.

See Assignment of Errors, page 121.

ARGUMENT.

Point I.

The record in this case presents a Federal question which should be reviewed by this Court.

First.—When the private papers seized in the raid of the defendant's premises were offered in evidence upon the trial, their reception was objected to on the express ground that their introduction would be in violation of the defendant's rights secured to him by the Constitution of the United States.

The specific language of the objection is:

> "*Mr. Ridgway:* I object to it on the "ground that it appears by the testimony "that the exhibits sought to be introduced "in evidence were the result of a seizure of "the defendant's personal papers under a "search warrant, and I take the ground that "the introduction of the same in evidence "against his objection, is compelling him to "be a witness against himself in violation of "the *Constitution of the United States* and "the State of New York, and I protest on "his behalf against their reception, and say "that it is without his consent that they are "now offered. Objection overruled; excep-"tion."

See Record, page 18.

This specific objection, it was clearly understood, applied to all of the papers seized in the raid, *including the private papers*, having no relation whatsoever to the game of policy.

> "*The Court:* I understand that you have "a general objection, without the necessity

"for specifying, and that it applies to all the "papers taken from the desk, trunk, or tin "boxes. Of course, if there be any special "objection to any particular thing apart "from *the general objection, if you will call* "my attention to it, I will rule upon it.

"*Mr. Ridgway:* I suppose there might be "additional objection to the private bills and "papers, which are being read out here on "the ground that they do not relate to the "game of policy, and there is no pretense "that they do."

See Record, page 21.

It also distinctly appears that the question of the violation of the defendant's rights, as secured by the Federal Constitution was presented to, and decided adversely upon the appeals to the Appellate Division of the Supreme Court and to the Court of Appeals.

Upon the appeal to the Court of Appeals, it is expressly stated in the opinion, as follows:

"The first point made by the learned coun- "sel for the appellant is that by reason of the "seizure of defendant's papers, as in the "manner prescribed, the defendant's consti- "tutional right to be secure in his person, "papers and effects against unreasonable "searches and seizures, was violated, and he "was also thereby compelled to be a witness "against himself *in contravention of the* "*Fourth, Fifth and Fourteenth Articles of* "*Amendment to the Constitution of the* "*United States* and Article 1, Section 6, of "the Constitution of the State of New York, "and Section 2 of the bill of rights of this "State."

See Opinion, BARTLETT, J., Record, page 114.

That the question as to the constitutionality of the statute under which the indictment was found was also expressly before and considered by the Court of Appeals, is equally clear from the language of the opinion.

> "The next point argued by the appellant's
> " counsel is that Sections 344a and 344b of
> " the Penal Code, under which the indict-
> " ment was found and the conviction had,
> " are unconstitutional and void for the reason
> " that the defendant has been deprived of his
> " liberty and property without due process
> " of law in violation of both *the Federal* and
> " State Constitutions."

See Case, page 116.

It, therefore, distinctly appears, by the record, we submit, that the questions sought to be raised by the assignment of errors were distinctly presented to and passed upon adversely to the defendant's contention in the State courts.

Second.—There still remains for consideration, however, the further question whether either or both of the questions sought to be raised are rights secured to the defendant by the Federal Constitution, and this will involve an examination into the grounds upon which the alleged rights are based.

(1st). It was said by the Court of Appeals that
" Articles Fourth and Fifth of the Amendments to
" the Constitution of the United States do not
" apply to actions in the State courts."

See Opinion BARTLETT, J., Record, page 114.

This statement undoubtedly is based upon statements made in the opinions of this Court, to the effect that the first ten amendments are restrictions only on Federal power, and have no application to

proceedings in the State courts. While, so far as the first ten amendments themselves are concerned, the statement may be accurate, nevertheless, since the adoption of the Fourteenth Amendment, it is accurate in so far, and in so far only, as the rights specifically enumerated do not appertain to the fundamental rights, privileges and immunities of American citizenship.

In the cases of MAXWELL *v.* DOW (176 U. S., 581), and in BROWN *v.* NEW JERSEY (175 U. S., 582), this Court took occasion to examine critically and at length the various decisions upon the application of the first ten amendments to proceedings in the State courts.

In the MAXWELL case the question was whether a State had the right to prosecute a crime above the grade of misdemeanor by information instead of by an indictment by a Grand Jury, and in the BROWN case the question was whether a trial by a struck jury in a murder case, in conformity to a State statute providing that the Court may select from the persons qualified to serve as jurors, 96 names from which the prosecutor and defendant may each strike 24, and the remainder of which shall be put in the jury box, out of which the trial jury shall be drawn in the usual way, was in violation of the provision of the Federal Constitution as to "due process of law."

It was held that neither was a violation of the provisions of the Federal Constitution.

But from the reasoning of the opinions and from the cases cited, it is clear that the decisions went on the ground that neither a prosecution by indictment nor a trial by a jury of twelve persons chosen according to the course of the common law, *is a privilege or immunity guaranteed to citizens of the United States when prosecuted for crime in the State courts;* and it clearly appears that this Court IN NO WAY HELD THAT ALL OF THE RIGHTS ENUMERATED IN THE FIRST TEN AMENDMENTS WERE NOT

PRIVILEGES AND IMMUNITIES OF AMERICAN CITIZENSHIP PROTECTED AGAINST VIOLATION BY STATE LAW.

This is made clear by the language of the opinion in the Maxwell case written by MR. JUSTICE PECKHAM.

After referring to many decisions of this Court upon the effect of the constitutional amendments, and especially of the Fourteenth Amendment, the learned Justice states:

> " We have cited these cases for the pur-
> " pose of showing that the privileges and im-
> " munities of citizens of the United States
> " *do not necessarily include* ALL *the rights*
> " *protected by the first eight amendments to*
> " *the Federal Constitution* against the powers
> " of the Federal Government. They were
> " decided subsequently to the adoption of
> " the Fourteenth Amendment, and *if the*
> " *particular clause of that amendment now*
> " *under consideration* had the effect claimed
> " for it in this case, it is not too much to say
> " that it would have been asserted and the
> " principles applied in some of them."

After so stating, the question is discussed whether trial by a jury according to the course of the common law, is a necessary requisite of due process of law protected by the Federal Constitution, and upon a review of the cases, the conclusion was reached that such a trial *was not one of those fundamental rights included in the phrase " due process of law,"* and the language of MR. JUSTICE BREWER in BROWN *v.* NEW JERSEY (*supra*) was quoted and approved to the effect " that the State has full control over " *the procedure in its courts*, both in civil and crim- " inal cases, subject only to the qualification that " *such procedure* MUST NOT WORK A DENIAL OF FUN- " DAMENTAL RIGHTS, or conflict with specific and " applicable provisions of the Federal Constitu- " tion."

Maxwell *v.* Dow (*supra*).

Hence we have to consider whether the rights claimed to have been violated in the case at bar are *fundamental rights* secured to the defendant by the Federal Constitution, and particularly by the Fourteenth Amendment, providing that "No State "shall make or enforce any law *which shall* "*abridge the privileges or immunities of citizens of* "*the United States; nor* shall any State *deprive* "*any person of life, liberty or property without due* "*process of law, nor deny to any person within its* "*jurisdiction the equal protection of the laws.*"

U. S. Constitution, 14th Amendment.

(2d). The rights of a person to be secure in his person, papers and effects against unreasonable searches and seizures, and not to be compelled in a criminal case to be a witness against himself, are fundamental rights of American citizenship and protected by the Federal Constitution against legislation by the States.

In Maxwell *v.* Dow (*supra*), Mr. Justice Harlan, in his dissenting opinion, argued that if the right to a trial by jury according to the course of the common law could be abrogated by State legislation, it would follow that other rights covered by the first ten amendments, and which the learned Justice stated, *no one doubts were regarded by the framers of the Constitution as fundamental rights and privileges*, could also be abrogated and annulled.

And among those fundamental rights *protection against unreasonable searches and seizures and not to be a witness against himself*, were specifically classed.

The learned Justice said:

> "I take it, no one doubts, that the great "men who laid the foundations of our Gov- "ernment regarded the preservation of the

" privileges and immunities specified in the
" first ten amendments as vital to the per-
" sonal security of American citizens. To
" say of any people that they do not enjoy
" those privileges and immunities is to say
" that they do not enjoy real freedom. But
" suppose that a State should prohibit the
" free exercise of religion, or abridge the
" freedom of speech or of the press, or for-
" bid its people from peaceably assembling
" to petition the Government for a redress
" of grievances, or authorize soldiers in
" time of peace to be quartered in any house
" without the consent of the owner, or
" *permit the persons, houses, papers and ef-*
" *fects of the citizens to be subjected to unrea-*
" *sonable searches and seizures under war-*
" *rants not issued upon probable cause, nor*
" *supported by oath or affirmation, nor de-*
" *scribing the place to be searched and the*
" *persons or things to be seized;* or allow a
" person to be twice put in jeopardy of life
" or limb; *or compel the accused to be a wit-*
" *ness against himself;* or deny to the ac-
" cused the right to be informed of the
" nature and cause of the accusation against
" him, to be confronted with the witnesses
" against him, to have compulsory process
" for obtaining witnesses in his favor, or to
" have the assistance of counsel; or require
" excessive bail; or inflict cruel and unusual
" punishment. These, or any of these things
" being done by a State, this Court, accord-
" ing to the reasoning and legal effect of the
" opinion just delivered, would be bound to
" say that the privileges and immunities
" specified were not privileges and immuni-
" ties of citizens of the United States within
" the meaning of the Fourteenth Amend-
" ment, and that citizens of the United
" States affected by the action of the State

> "could not invoke the protection of that
> "amendment, or of any other provision of
> "the national Constitution."

After making these observations, the learned Justice continues:

> "If a State can take from the citizen
> "charged with crime the right to be tried by
> "a jury of twelve persons, it can, so far as
> "the Constitution of the United States is
> "concerned, take away the remaining privi-
> "leges and immunities specified in the
> "national Bill of Rights."
>
> Maxwell *v.* Dow (*supra*), Opinion, HARLAN, J.

We have quoted at length from the opinion of the majority of the Court and the opinion of JUSTICE HARLAN for the purpose of showing that while *some* of the rights specified in the first ten amendments, and particularly such as relate to mere matters of procedure, are not applicable to the States, nevertheless that it was not decided or intended to be that *all of the rights and privileges enumerated therein* were beyond the protection of the Federal Constitution against State legislation, and that, among the inviolable and fundamental rights are the protection of the citizen in his person, papers and effects against unreasonable searches and seizures and against being compelled in a criminal case to be a witness against himself, and that to deny him such rights would be to deny him fundamental rights of American citizenship in violation of the Fourteenth Amendment, prohibiting a State from making and enforcing any law abridging the "privileges or immunities of citizens of the "United States."

In at least two cases the precise question raised by the first assignment of error was presented to this Court, but in both of those cases the Court re-

fused to pass upon the question on the sole ground that no Federal question *had been raised and considered by the State Court.*

There is no intimation, however, that if a violation *of the Federal Constitution had been the ground of objection in the State Court*, and an adverse decision had been reached, a Federal question would not have been presented for review by this Court.

Levy *v.* Superior Court of San Francisco, 167 U. S., 175.

Mallett *v.* North Carolina, 181 U. S., 589.

We intend to review these decisions more at length under a subsequent point. Our present purpose is to cite them in support of our argument that a Federal question is presented by the record in the case at bar because objection was specifically taken to the use of the private papers *on the ground of a violation of the Federal Constitution*, and in all of the State courts before which the case was brought for review, that question was considered and decided adversely to the defendant.

We, therefore, submit that the question raised by the first assignment of error presents a Federal question which should be reviewed by this Court.

(3d). THE QUESTION PRESENTED BY THE SECOND ASSIGNMENT OF ERROR IS ALSO A FEDERAL QUESTION AND COGNIZABLE BY THIS COURT.

It is claimed that the statute under which the defendant was indicted is unconstitutional in that thereby he has been deprived of his liberty without "due process of law."

This claim is based on the fact that the statutes prescribe that a person "*who shall have in his pos-*
"*session knowingly any writing, paper or docu-*
"*ment, representing or being a record of any*
"*chance, share or interest in numbers, sold, drawn,*

" *or to be drawn, or in what is commonly called policy* " * * * *or any paper, print, writing, device, policy* " *slip or article of any kind, such as is commonly* " *used in carrying on, promoting or playing the* " *game commonly called policy* * * * *is a common* " *gambler and punishable by imprisonment for not* " *more than two years, and in the discretion of the* " *Court by a fine of $1,000, or both,*" and, further, " that "THE POSSESSION BY ANY PERSON OTHER " THAN A PUBLIC OFFICER * * * IS PRESUMPTIVE " EVIDENCE OF POSSESSION THEREOF KNOWINGLY, " AND IN VIOLATION OF THE PROVISIONS OF SECTION " 344A."

See Penal Code, Secs. 344a and 344b.

The grounds upon which it is claimed this statute is unconstitutional are:

1st. *That to create an arbitrary presumption of guilt is to deprive a defendant of his liberty and property without "due process of law," in that the right to be presumed innocent until he is proven to be guilty is taken away, and the right to a jury trial is thereby curtailed.*

State *v.* Beswick, 13 R. I., 211.
Wynehamer *v.* People, 13 N. Y., 446.

2d. *That to except from the presumption of guilt created by the mere fact of possession, every public officer, and to make that presumption applicable only in the case of a private citizen, is to deny the equal protection of the laws.*

3d. *That to make the possession of articles similar to those in universal use, i. e., pieces of papers with combinations of figures upon them, and incapable of injury to others and in themselves harmless, a criminal offense is an arbitrary exercise of power.*

Assuming for the purpose of argument under this point that we are right in our contention, the

defendant has been deprived of his liberty without "due process of law," and has been denied the equal protection of the laws within the meaning of the Fourteenth Article of Amendment.

This brings us, then, to the discussion of the merits of the questions presented by the Assignment of Errors, viz.:

1st. HAS THE DEFENDANT'S CONSTITUTIONAL RIGHT TO BE SECURE IN HIS PERSON, PAPERS AND EFFECTS AGAINST UNREASONABLE SEARCHES AND SEIZURES, AND NOT TO BE A WITNESS AGAINST HIMSELF IN A CRIMINAL CASE, BEEN VIOLATED BY THE PROCEEDINGS IN THE CASE AT BAR? AND

2d. HAS THE DEFENDANT BEEN DEPRIVED OF HIS LIBERTY WITHOUT DUE PROCESS OF LAW, OR DENIED THE EQUAL PROTECTION OF THE LAWS?

Point II.

By the reception in evidence of the defendant's private papers, seized in the raid of December 12th, 1901, which had no relation whatsoever to the game of policy, his constitutional right to be secure in his person, papers and effects against unreasonable searches and seizures was violated, and he was also thereby compelled to be a witness against himself in contravention of the Fourth, Fifth and Fourteenth Articles of Amendment to the Constitution of the United States.

First.—It will be wholly impracticable and unnecessary to refer in detail to each of the papers

offered in evidence for the purpose of creating the so-called standards of comparison, and of showing that the room in which the alleged contraband goods was found was the private office of the defendant.

Suffice it to say that many of them were concededly papers of the most personal character, among others, a bill rendered to the defendant by the Hotel Savoy (Exhibit M, page 50); an option upon certain mining products in Mexico (see Exhibits G and H, page 106); a small card bearing the words "Amasa Thornton, Lawyer, 150 Broadway, "New York," on the back of which was written in ink: "Dear Al—I left the papers with Bauerdorf; "meet me there to morrow at 11 A. M. A. T." (Exhibit C, page 106).

For the purpose of illustrating the method of proof pursued by the prosecution, we have selected one or two of the so-called standards of comparison and one or two of the wrappers on the "manifold sheets" which were used in proving his case by the learned District-Attorney.

People's Exhibit 143a is a piece of newspaper that was wrapped around a roll of "manifold sheets" similar to those contained in People's Exhibit 11, on which were the words and figures "X Novem- "ber 15" and "November 15, '01," written in print with black lead pencil. (see Case, page 104).

People's Exhibit Ca is also a piece of newspaper that was wrapped around the roll marked People's Exhibit C, containing "manifold sheets" similar to those contained in People's Exhibit 11, on which were the words "November 25 X" written in print with blue lead pencil (see Case, page 104).

To prove that the handwriting on these wrappers was the defendant's handwriting, it was testified by the witnesses Steele and Balmer, who claimed to be familiar with the defendant's handwriting, that among numerous other papers, People's Ex-

hibits 50, 60 and 61 were in the handwriting of the defendant.

See testimony of Steele, page 34.
See testimony of Balmer, page 51.

Exhibit 50 is a piece of white paper bearing various words and figures, including the words "November 5th, 1900" (see Case, page 98).

Exhibit 60 is a piece of white paper also bearing various numbers and names of streets and columns of figures; one column being headed "taxes," printed by hand in blue lead pencil (see Case, page 98).

People's Exhibit 61 is a similar piece of paper containing various names of streets and numerous columns of figures; one column being headed "rent," written in lead pencil, another column being headed "exp.," another "int. checks," and another "total exp.," and still another "profit and loss." (see Case, page 98).

This evidence, and all other of like character, was repeatedly objected to by the defendant on the ground that the papers were purely of a private character, having no relation whatsoever to the game of policy; that possession of them was obtained without his consent and against his protest, and as the result of an unreasonable search and seizure, and that their reception in evidence would be in violation of his constitutional rights as secured both by the United States Constitution and the Constitution of the State of New York.

See Case, pages 18-28; page 34; page 51.

The objection was, however, overruled, and the witness Carvalho, an alleged expert, was called, who testified, using the papers identified as standards of comparison, that the handwriting on the wrappers enclosing the "manifold sheets" was the

same handwriting as in the papers exhibited as standards.

See testimony of Carvalho, pages 70-71, fol.

Second.—THE RIGHTS CLAIMED TO HAVE BEEN VIOLATED BY THIS PROCEDURE ARE SECURED TO THE DEFENDANT BY THE FOURTH, FIFTH AND FOURTEENTH ARTICLES OF AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

(*A*). By the Fourth Article of Amendment it is provided:

> "The right of the people to be secure in "their persons, houses, *papers* and effects "against unreasonable searches, and seizures "shall not be violated; and no warrant shall "issue, but upon probable cause, supported "by oath of affirmation, and particularly de- "scribing the place to be searched and the "person or things to be seized."

See U. S.. Constitution, Fourth Amendment.

By the Fifth Article of Amendment it is provided:

> "No person * * * shall be compelled "in any criminal case to be a witness against "himself nor be deprived of life, liberty or "property without due process of law."

See U. S. Constitution, Fifth Amendment.

By the Fourteenth Article of Amendment, it is provided:

> "*No State* shall make or enforce any law "which shall abridge the privileges or im- "munities of citizens of the United States; "*nor shall any State* deprive any person of

"life, liberty or property without due process "of law, nor deny to any person within its "jurisdiction the equal protection of the "laws."

See U. S. Constitution, Fourteenth Amendment.

(*B*). The reasons which gave rise to the enactment of these provisions are well known. They were deemed essential to the enjoyment of that individual liberty and security of person and property which it was the object of both the Federal and State Governments to secure.

That those rights were grossly violated by the method of proof adopted in this case, we consider, has been expressly decided by this Court.

Boyd *v.* U. S., 116 U. S., 616.

That case is well known, and a mere citation of it would seem to be all that were necessary, were it not for the fact that it was held to be distinguishable from the present case by the State Courts.

In the BOYD case the proceedings were *in rem* to establish the forfeiture of goods alleged to have been fraudulently imported without paying duties thereon, and the question was whether an act of Congress authorizing a court of the United States in revenue cases, on motion of the Government attorney, to require the defendant or claimant to produce in court his private books, invoices and papers, or else the allegations of the attorney to be taken as confessed, was constitutional.

Conceding that the facts in that case are different from those in the case at bar, nevertheless, the views expressed in the opinion and the reasons given for the conclusion arrived at, are directly applicable and conclusive here.

As the reasoning of MR. JUSTICE BRADLEY is the strongest argument which can possibly be made in

favor of our contention, we cannot forbear quoting therefrom at length.

The learned Justice, speaking first of the nature of the proceedings intended by the Fourth Amendment, says:

> "In order to ascertain the nature of the "proceedings intended by the Fourth Amend- "ment to the Constitution under the terms "'unreasonable seizures and searches,' it is "only necessary to recall the contemporary "or then recent history of the controversies, "both in this country and in England. The "practice had obtained in the colonies of is- "suing writs of assistance to the revenue "officers, empowering them in their discre- "tion to search suspected places for smug- "gled goods which James Otis pronounced "'the worst instrument of arbitrary power, "the most destructive of English liberty and "the fundamental principles of law, that "ever was found in an English law book;' "since they placed 'the liberty of every man "in the hands of every petty officer.' This "was in February, 1761, in Boston, and the "famous debate in which it occurred was "perhaps the most prominent event which "inaugurated the resistance of the colonies "to the oppressions of the mother country. "'Then and there,' said John Adams, 'then "and there was the first scene of the first "act of opposition to the arbitrary claims of "Great Britian. Then and there the child "Independence was born.'"

JUSTICE BRADLEY then refers to the case of WILKES and LORD CAMDEN'S discussion of the subject, and continues:

> "As every American statesman, during "our revolutionary and formative period of "the nation, was undoubtedly familiar with

"this monument of English freedom and
"considered it as a true and ultimate ex-
"pression of constitutional law, it may be
"confidently asserted that its propositions
"were in the minds of those who framed
"the Fourth Amendment to the Constitu-
"tion, and were considered as sufficiently
"explanatory of what was meant by 'un-
"reasonable searches and siezures.'"

And quoting the words of LORD CAMDEN, he observes:

"Papers are the owner's goods and chat-
"tels; they are his dearest property; and
"are so far from enduring a seizure that
"they will hardly bear inspection; and
"though the eye cannot by the laws of
"England be guilty of a trespass, yet,
"where private papers are removed and
"carried away, the secret nature of those
"goods will be an aggravation of the tres-
"pass, and demand more considerable dam-
"ages in that respect."

Commenting upon LORD CAMDEN'S opinion, JUSTICE BRADLEY says:

"The principles laid down in this opinion
"affect the very essence of constitutional
"liberty and security. They reach farther
"than the concrete form of the case then
"before the Court, with its adventitious cir-
"cumstances; they apply to all invasions on
"the part of the government and its em-
"ployees, of the sancity of a man's home and
"the privacies of his life. *It is not the break-*
"*ing of his doors and the rummaging of his*
"*drawers that constitutes the essence of the*
"*offence; but it is the invasion of his inde-*
"*feasible right of personal security, per-*
"*sonal liberty and private property, where*

"*that right has never been forfeited by his* "*conviction of some public offence; it is* "*the invasion of this sacred right which* "*underlies and constitutes the essence of* "*Lord Camden's judgment.* Breaking into "a house and opening boxes and doors are "circumstances of aggravation; *but any* "*forcible and compulsory extortion of* "*man's own testimony, or of his private* "*papers, to be used as evidence to convict* "*him of crime, or to forfeit his goods, is* "*within the condemnation of that judgment.* "In this regard the Fourth and Fifth Amend- "ments run almost into each other. Can "we doubt that when the Fourth and Fifth "Amendments of the Constitution of the "United States were penned and adopted, "the language of Lord Camden was relied "on as expressing the true doctrine on the "question of searches and seizures and as "furnishing the true criteria of the reasona- "ble and unreasonable character of such "seizures."

As to the relation between the Fourth and Fifth Amendments the opinion continues:

"We have already noticed the intimate "relation between the two amendments. "They throw great light on each other. For "the 'unreasonable searches and seizures' "condemned in the Fourth Amendment are "almost always made for the purpose of "compelling a man to give evidence against "himself, which, in criminal cases, is con- "demned in the Fifth Amendment; and "compelling a man 'in a criminal case to "be a witness against himself,' which is con- "demned in the Fifth Amendment, throws "light on the question as to what is 'an un- "reasonable search and seizure' within "the meaning of the Fourth Amendment.

"And we have been unable to perceive that "the seizure of a man's private books and "papers, to be used in evidence against him, "is substantially different from compelling "him to be a witness against himself. We "think it within the clear intent and mean- "ing of those terms."

Boyd *v.* United States (*supra*).

Could a stronger argument be made in support of the defendant's contention? Or could facts be shown which would bring a case more clearly within the prohibition of the constitutional provisions, as thus construed, than were shown in the case at bar?

Concededly, the sole object of the raid was to obtain evidence upon which not only to prove the defendant's guilt, after indictment, but upon which *to base an indictment* against him. That raid was made by the Chief County Detective of the District Attorney's office, the prosecutor of New York County, and it was upon his testimony, based upon the fruits of that raid, that the indictment, as well as the conviction of the defendant, was based.

Upon the trial it was claimed that the raid and search was made under a search warrant. But no search warrant was produced, and when the defendant attempted to show that none ever was in existence, the testimony offered was ruled out (see Record, pages 81-82). When he demanded its production, a statement was made by the District Attorney that the search warrant had disappeared, and could not be found (see Record, page 8).

Even if, however, a search warrant was in existence, it could not authorize to be done the acts which were done, viz., *the seizure of the defendant's private papers.*

By Section 792 of the New York Code of Criminal Procedure it is provided upon what grounds a search warrant may be issued:

"1. When the property was stolen or em-
" bezzled; in which case it may be taken, on
" the warrant, from any house or other place
" in which it is concealed, or from the posses-
" sion of the person by whom it was stolen
" or embezzled, or of any other person in
" whose possession it may be.

"2. When it was used as the means of
" committing a felony; in which case it may
" be taken, on the warrant, from any house
" or other place in which it is concealed, or
" from the possession of the person by whom
" it was used in the commission of the crime,
" or of any other person in whose possession
" it may be.

"3. When it is in the possession of any
" person, with the intent to use it as the
" means of committing a public offense, or
" in the possession of another, to whom he
" may have delivered it for the purpose of
" concealing it, or preventing its being dis-
" covered; in which case it may be taken, on
" the warrant, from such person, or from a
" house or other place occupied by him, or
" under his control, or from the possession
" of the person to whom he may have so de-
" livered it."

See Code of Criminal Procedure, Sec. 792.

No authority is given by this section for the seizure of private papers and documents not relating to the offense.

But in our view of the question, it would make no difference whether a search warrant was in existence or not. The protection of the constitutional provision is directed not only against the unlawful seizure, but also against the *unlawful use* after seizure.

Its real object and purpose is to prevent the seizure of a man's private papers *for the purpose of using them against him in a criminal prosecution, or to discover evidence of crime*, and not merely the prevention of the commission of a trespass, for which the common law always affords a remedy irrespective of constitutional provisions.

To repeat the language of MR. JUSTICE BRADLEY in the BOYD case (*supra*):

> " It is not the breaking of his doors and
> " the rummaging of his drawers that consti-
> " tutes the essence of the offence; *but it is*
> " *the invasion of his indefeasible right of*
> " *personal security, personal liberty and pri-*
> " *vate property, where that right has never*
> " *been forfeited by his conviction of some*
> " *public offence.* * * * "

Boyd *v.* United States (*supra*).

The precise point for which we are contending was decided in UNITED STATES *v.* WONG QUONG WONG (*supra*), in which case DISTRICT JUDGE WHEELER, answering the contention that the Court would not concern itself with the method of procuring the evidence, said:

> " It has been said that the manner of ob-
> " taining such evidence, whether by force or
> " fraud, does not affect its admissibility;
> " BUT THESE CONSTITUTIONAL SAFEGUARDS
> " WOULD BE DEPRIVED OF A LARGE PART OF
> " THEIR VALUE IF THEY COULD BE INVOKED
> " ONLY FOR PREVENTING THE OBTAINING OF
> " SUCH EVIDENCE, AND NOT FOR PROTECTION
> " AGAINST ITS USE. The cases cited show
> " THAT THEY COVER THE USE OF PAPERS FOR
> " TESTIMONY WHEN IT WOULD BE A CARRYING
> " OUT OF THEIR VIOLATION."

United States *v.* Wong Quong Wong (*supra*).

While, so far as our examination of the decisions of this Court discloses, the views expressed in the BOYD case have not been applied to a case involving facts precisely similar to the one at bar, the precise point raised in this case has, however, been presented in at least two other cases, but was not decided, because this Court held that the question had not properly been presented for decision and considered by the State courts.

> Levy *v.* Superior Court of San Francisco (*supra*).
> Mallett *v.* North Carolina (*supra*).

In the LEVY case the writ of error was to the Supreme Court of the State of California to review an order denying a writ of prohibition against the Superior Court of San Francisco to command that Court to refrain from trying certain issues and allegations in a proceeding pending therein relating to the estate of a deceased person.

MR. JUSTICE HARLAN, writing for this Court, said:

> "This writ of error must be dismissed for "want of jurisdiction in this Court to re-ex- "amine the final judgment of the Supreme "Court of California. The plaintiff claimed "in the State Court that certain provisions "of the State enactment referred to were "repugnant to the Constitution of Califor- "nia. But he did not in the State Court "draw in question any statute of the State "upon the ground that it was repugnant to "the Constitution of the United States, nor "specially set up or claim in that court any "right, title, privilege or immunity under "the Constitution of the United States. He "insists in this Court that the enforcement "of the above statutory provisions was a "denial of the equal protection of the laws— "a denial forbidden by the Fourteenth

"Amendment of the Constitution of the "United States. But this record does not "show that he made any such claim in the "State Court. The reference in the opinion "of that Court to the cases of Boyd *v.* "United States and Counselman *v.* Hitch-"cock was for the purpose of ascertaining "the proper construction of certain provis-"ions of the Constitution of California, not "as defining rights asserted by the plaintiff "under the Constitution of the United "States. From the pleadings in the cause "the State Court had no reason to suppose "that the plaintiff specially claimed that "the statute in question deprived him of any "right secured by the Constitution of the "United States. * * * If the plaintiff "intended to claim that the statute in ques-"tion was repugnant to the Constitution of "the United States, he should have so de-"clared."

Levy *v.* Superior Court of San Francisco (*supra*).

In the MALLETT case, it appeared that the plaintiff in error and one Mehegan were indicted and tried in a criminal court of North Carolina for conspiracy to defraud and they were convicted and sentenced to two years imprisonment. An appeal was taken to the Superior Court of that State, which Court reversed the judgment and granted a new trial.

From this judgment the State appealed to the Supreme Court, which reversed the judgment of the Superior Court and remanded the cause to the Criminal Court with directions that the sentence imposed should be carried into execution.

At the time of the commission of the offense, and at the time of the trial, the State of North Carolina was not entitled to appeal to the Supreme Court

from the judgment of the Superior Court and one of the questions presented to this Court was whether the statute allowing such an appeal was *ex post facto*, which this Court decided was not the case; but the further question was presented as to whether, by the use of certain books of account belonging to the defendants in evidence against him, they were thereby made to be witnesses against themselves, and their privileges and immunities as citizens of the United States abridged and they were deprived of their liberty without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States.

In the opinion, which was written by MR. JUSTICE SHIRAS, it was said:

> "In the petition for a rehearing in the "Supreme Court, which, as we have seen, "is the only part of the record on which the "plaintiffs in error can rely as raising Fed- "eral questions, the point was thus pre- "sented:
>
> "That prior to the beginning of this "action an attachment against the property "of the defendants was issued at the in- "stance of J. M. Baker, administrator of M. "L. Woolard and of Solomon Woolard, who "is the chief prosecuting witness in the case. "By virtue of said attachment the Sheriff of "Edgecombe County seized the ledger and "counter book of the defendants and has "kept possession of them up to this time. "At the trial of the present indictment "the said books so wrongfully taken "from the defendants were offered "in evidence. The defendants ob- "jected; the objection was overruled, and "the defendants excepted. In this the de- "fendants submit there was error. For it is, "in effect, making the defendants give evi- "dence against themselves under the prin- "ciples laid down in the case of Boyd *v.*

" United States, 116 U. S., 616. At the " argument of this case at this term counsel " had not found this authority, and their " argument did not go upon this ground. " Since said hearing they found said case, " and they are advised that the principle and " the authority are decisive, and would at " once satisfy the Court of the defendants' " right to a new trial, if the matter could be " brought to its attention."

" The only ground of objection shown by " the record to have been taken by defend- " ants' counsel to the admission of this evi- " dence was because the testimony now " offered was subsequent to the examination " in the supplementary proceedings.

" Nothing seems to have been claimed, either " in the Criminal Court or in the Superior " Court, as to the inadmissibility of the " books as evidence on the ground of any " provision of the Federal Constitution. The " Supreme Court thus treated the subject:

" We will consider now the only exception " which the petition to reargue insists the " Judge of the Superior Court should have " passed upon and held in favor of the de- " fendants, *i. e.*, that the Sheriff, by attach- " ment, having seized the ledger and counter " book of the defendants, they were put in " evidence against them. There was cer- " tainly no error in using the defendants' " own entries against them. The shoes of a " party charged with the crime can be taken " and fitted to tracks as evidence, and in one " case, when a party charged with crime was " made to put his foot into the tracks, the " fact that it fitted was held competent. " State *v.* Graham, 74 N. C., 648. Nor has " it ever been suspected that if, upon a " search warrant, stolen goods are found in

"the possession of the prisoner, that fact can-
"not be used against him. Here the books
"came legally into the possession of another,
"and his telltale entries were competent
"against the parties making them in the
"course of their business."

"It therefore appears by the statement of
"the plaintiffs in error in their petition for a
"reargument that no Federal question was
"raised or considered in the criminal court
"or in the Superior Court, in respect to the
"admission of the evidence, so that there
"was no basis on which to claim error in
"this respect in those courts. Nor did the
"Supreme Court, in passing upon the con-
"tention, deal with it as a Federal question,
"but as a mere question arising under the
"administration of the criminal law of the
"State, and there is, therefore, nothing in
"its action for us to review."

Mallett *v.* North Carolina (*supra*).

Both of these cases, therefore, leave the question presented on this review open for decision by this Court.

(*C*). Passing to the State courts, we find decisions by the highest courts of Iowa and Vermont in which the principles discussed in the BOYD case were held directly applicable to facts similar to those in the case at bar.

State *v.* Sheridan (Iowa, October, 1903), 96 Northwestern Rep., 730.
State *v.* Slamon, 73 Vermont, 212.

In the Iowa case the defendant, an ice dealer, was charged with having maliciously injured or destroyed a quantity of ice belonging to a competitor in business by putting upon it a large quantity of

salt. The prosecuting witness claiming that his ice had been maliciously destroyed, and having been informed that the defendant bought a barrel of salt from a local merchant a day or two before that date, filed a preliminary information before a Justice of the Peace, and caused a warrant to issue for the defendant's arrest. At the same time the prosecuting witness filed an affidavit alleging the purchase of salt by the defendant, and stating his belief that the salt was used in perpetrating the crime above mentioned, and that the salt or the barrel in which it was contained was in the possession of the defendant at his residence, and he asked for a search warrant to search the defendant's residence and seize the barrel of salt, if found.

A search warrant was issued, and the officer in executing it, claimed to have found in the cellar of defendant's residence an empty salt barrel, and on the trial he identified the barrel so found, which was then offered and admitted in evidence over the defendant's objection.

In the opinion written by WEAVER, J., it was said:

> "It is conceded by the Attorney General
> " that the search warrant was issued with-
> " out the authority of law, and that the
> " search and seizure made thereunder were
> " wrongful. It was also shown by the evi-
> " dence upon the trial, and without dispute,
> " that the search warrant was asked for,
> " procured and served for the sole 'purpose
> " of obtaining testimony' against the appel-
> " lant. For the purposes of this appeal, we
> " may admit that it has often been held that
> " the mere fact that evidence has been de-
> " veloped by the wrongful act or trespass of
> " an officer or any other person will not
> " necessarily render it inadmissible, but we
> " are confronted by the further fact that the
> " evidence objected to was obtained by a
> " palpable abuse of judicial process.

"In the Height case, we said that while an "officer may properly testify to criminating "facts discovered by him in the execution of "a warrant wrongfully issued, yet 'a party "to a suit can gain nothing by virtue of vio- "lations under the pretense of process, nor "will a fraudulent or unlawful use of process "be sanctioned by the courts.'

"In such cases parties will be restored to "the rights and positions they possess, be- "fore they were deprived thereof by fraud, "violations or abuse of legal process. * * * "The search was for the mere purpose of "securing evidence by an invasion of the "private premises of the defendant, and we "think there is no consideration whatever "which will justify it. * * *

"The search was for the mere purpose of "securing evidence by the invasion of the "private residence of the defendant. The "sacredness of his person against such an "act is protected by no higher or stronger "guaranty than that of his home, his papers "and effects.

"In Boyd *v* U. S., 116 U. S., 616, the con- "stitutional prohibition of unreasonable "searches and seizures is said to be closely "related to the immunity which the citizen "enjoys against being compelled to be a "witness against himself, and it is there "held that the compulsory production by the "the defendant of an article to be used in "evidence against him in a prosecution for "crime or enforcement of a penalty, is in "effect a violation of that constitutional "provision. If, in that case, instead of or- "dering the defendant to produce the de- "sired article or paper, the Court, without "authority of law, had issued a search war- "rant, under which the Sheriff invaded the

" private room or safe of the defendant and " thus obtained the means of securing his " conviction, would not the violation of the " constitutional guaranty have been as pal- " pable, and the admission of the evidence " thus secured as clearly erroneous as was the " method actually employed? It is said, how- " ever, that the Court will not inquire how the " offered evidence has been procured, and " even if obtained by a search warrant in " violation of the defendant's constitutional " or legal rights, it will still be admitted, if " otherwise competent, and that defendant's " only redress is an action for damages against " the officer or person committing the tres- " pass. It is true, some cases give seem- " ing support to this doctrine, but most " of them, when examined, will be found to " be instances in which the incriminating evi- " dence has been discovered by persons acting " without color of authority, or by officers as " the incidental result of the service of a war " rant of arrest, or other writ or process le- " gally issued. None can be found, we think, " where the State has been permitted to ob- " tain a search warrant in confessed viola- " tion of law, and thereby took papers or " property from the home of the man sus- " pected of the crime, and used the matter " thus procured in securing his conviction. " To so hold, is to emasculate the consti- " tutional guaranty and to deprive it of all " beneficial force or effect in preventing un- " reasonable searches and seizures. We " think the evidence should have been ex- " cluded."

State *v.* Sheridan (*supra*).

In the case at bar it is expressly claimed that the search and seizure were under a search warrant

authorizing and commanding it. Hence the Iowa case is directly applicable.

In the Vermont case, the information was for grand larceny.

An officer had a search warrant to search the person of the defendant for stolen goods. While engaged in the search he found on the person of the defendant, and took from it, a letter written to him by a person whom he called as a witness, in the impeachment of whom the letter contained material testimony.

Upon the trial the State offered the letter in evidence, and it was admitted under objection and exception. In the opinion of TAFT, C. J., it was said:

> "The taking of the letter from the person "of the respondent was a plain violation of "the Eleventh Article of the Declaration of "Rights, which provides 'that the people "have a right to hold themselves, their "houses, papers and possessions free from "search or seizure and, therefore, warrants, "without oath or affirmation first made af- "fording sufficient foundation for them, and "whereby any officer or messenger may be "commanded or required to search sus- "pected places or to seize any person or per- "sons, his, her or their property, not par- "ticularly described, are contrary to that "right and ought not to be granted.'
>
> "It is needless to discuss this question. We "refer to the case of John Wilkes, of the "North Briton, whose house was searched "and his papers indiscriminately seized by "virtue of a warrant issued by Lord Halifax, "Secretary of State. In an action of tres- "pass Wilkes recovered £1,000 against Wood, "one of the parties who made the search, "and £4,000 against Lord Halifax. Also "to Entick *v.* Carrington (19 Howell's State "Trials, 1029), and Boyd *v.* U. S. (116 U. S.,

"616). These cases contain the reasoning "and conclusions upon this question of the "greatest courts of the English speaking "nations. * * *

"It is generally considered immaterial how "a paper passes into the possession of one "offering it in evidence, BUT THIS RULE IS "SUBJECT TO ANOTHER RULE WHICH IS AP-"PLICABLE THAT WHEN A PARTY INVOKES "THE CONSTITUTIONAL RIGHT OF FREEDOM "FROM UNLAWFUL SEARCH AND SEIZURE, THE "COURT WILL TAKE NOTICE OF THE QUESTION "AND DETERMINE IT. * * *

"We also hold that the letter was inad-"missible under Article Ten of the Declara-"tion of Rights, which provides 'that in all "prosecutions for criminal offenses no per-"son can be compelled to give evidence "against himself,' and that this ruling is "correct is clearly manifest for the reasons "stated in Boyd *v.* U. S., hereinbefore "cited. * * *

"The seizure of a person's private papers "to be used in evidence against him *is* "*equivalent to compelling him to be a wit-*"*ness against himself*, and in a prosecution "for a crime, is within the constitutional "prohibition."

State *v.* Slamon (*supra*).

For other cases holding analogous views see

In re Jackson, 96 U. S., 727.

In re Pacific Railway Commission, 32 Fed. Rep., 241.

Hoover *v.* McChesney, 81 Fed. Rep., 472.

U. S. Wong Quong Wong, 94 Fed. Rep., 832.

The case last above cited decides the precise point.

(*D*). The Court of Appeals of New York State, however, took the position, that conceding the search and seizure were unlawful, nevertheless, the rule appled that, when engaged in trying a criminal cause, the Court will not take notice of the manner in which witnesses have possessed themselves of papers, or other articles of personal property, which are material and properly offered in evidence.

Opinion, BARTLETT, J., Record, pages 114–115.

(*a*). We must concede that the cases cited in the opinion of the Court of Appeals, and other decisions referred to by the learned District Attorney in his Brief before that Court, are authority for the proposition, as stated by JUSTICE BARTLETT, that "the "Court, when engaged in trying a criminal cause, "will not take notice of the manner in which wit- "nesses have possessed themselves of papers or "other articles of personal property, which are "material and properly offered in evidence." But, when examined, it will be found that the leading cases on that proposition do not hold that when, by the introduction in evidence of papers illegally seized, IT IS CLAIMED THAT THE PARTY'S CONSTITUTIONAL RIGHTS WILL BE VIOLATED, the Court will not examine into the question for the purpose of ascertaining whether the objection be well founded.

We do not contend that where papers are in themselves competent and material evidence, *and their introduction violates no constitutional right*, the fact that the possession of such papers has been obtained illegally will prevent their reception in evidence. In such cases, as stated in the decisions, the party aggrieved will find his remedy by suit against the person illegally obtaining possession thereof.

BUT WE DO CONTEND THAT WHERE A PERSON IS ACCUSED OF CRIME, AND COULD NOT HIMSELF BE COMPELLED TO PRODUCE HIS PRIVATE PAPERS AND BOOKS AS EVIDENCE AGAINST HIMSELF, EITHER BY SUBPŒNA OR OTHER LEGAL PROCESS, THEN THE FACT THAT HE HAS BEEN DIVESTED OF HIS POSSESSION WRONGFULLY AND UNLAWFULLY, DOES NOT PREVENT HIM FROM URGING THE PROTECTION AFFORDED BY THE CONSTITUTIONAL PROVISION AGAINST UNREASONABLE SEARCHES AND SEIZURES.

It is true that some of the cases, following the rule laid down in the leading cases on the question, do in effect hold that even where constitutional rights are claimed to have been violated, the Court will not inquire into the manner of procuring the evidence, but an analysis of those cases shows that the Court did not keep in mind the distinction between an *unlawful possession*, without color of right, the remedy for which would be trespass or other appropriate action, and an *unlawful use in contravention of constitutional provisions*. The distinguishing feature between the two classes of cases is, in one the single question is "unlawful possession," in the other it is "unlawful use," coupled with "unlawful possession." The decisions have confounded the two classes of cases, and held the rules laid down in the first class applicable to the second class.

(*b*). Before proceeding to analyze the cases relied upon by the State Courts, it will be well to consider the effect of the doctrine laid down by the Court of Appeals, upon the efficacy of the constitutional provisions.

If the views of that learned Court be upheld, then the protection afforded by the Constitution is more chimerical than real; for the protection against *unreasonable* searches and seizures *becomes merely a question of superior physical force.*

In other words, if a raiding party be sufficiently strong to break down a man's doors, and ransack

his drawers, and seize his private papers and documents, the constitutional provisions afford him no protection.

But such a construction would be a reproach to the Constitution and to the courts charged with the enforcement of its provisions.

Concerning the rights of Englishmen, Lord Chatham, in his speech on General Warrants declared:

> "The poorest man may, in his cottage,
> "bid defiance to all the forces of the Crown.
> "It may be frail; its roof may shake; the
> "wind may blow through it; the storm may
> "enter; the rain may enter; but the King of
> "England may not enter; all his force dares
> "not cross the threshold of the ruined tene-
> "ment."

Are the rights of an American citizen, under the Constitution, less than those of an Englishman under Magna Charta and the common law, or are the courts of this country less sensitive to the enforcement of those rights?

Suppose that a person accused of crime and in custody should make, in his own handwriting, a confession of his guilt, and that upon his trial it was offered in evidence against him, could it not be shown that the confession was not a voluntary one, but extorted from the prisoner, either through fear or by hope of reward? Would the Court not listen to the prisoner's plea as to the illegal means used to obtain the confession? Or, suppose that the prisoner making the confession was indicted for an offense in which the question of his handwriting was a material fact to be proved, could the confession be used as a standard of comparison with which to compare other handwriting alleged to be his? Would not such acts be within the meaning of the constitutional provisions? We cannot doubt the answer of this Court to

these questions. But would such a proceeding be a greater violation of a prisoner's constitutional rights than the procedure adopted in the case at bar?

(c). As to the cases cited by the learned Court below, we confidently assert that none of them decides the precise question now presented, but they were all cases where the evidence offered was either part of the *res gestæ* of the offenses sought to be proved, or in their nature contraband, and for that reason not entitled to be exempt from search and seizure.

They are all exemplifications of the general rule stated in COOLEY'S CONSTITUTIONAL LIMITATIONS, enumerating the special class of cases in which the right of seizure under a search warrant is allowed, viz., stolen goods, goods smuggled into the country in violation of the revenue laws, implements of gambling and counterfeiting, lottery tickets, prohibited liquors kept for sale contrary to law, obscene books or papers kept for sale or circulation, and powder or other explosive or dangerous material so kept as to endanger the public safety.

After enumerating these special instances the learned author states:

> "A statute which would permit the breaking and entering a man's house, and the examination of books and papers, with a view to discover the evidence of crime, might possibly not be void on constitutional grounds in some other cases; but the power of the Legislature to authorize a resort to this process is one which can properly be exercised only in extreme cases, and it is better oftentimes that crime should go unpunished than that the citizen should be liable to have his premises invaded, his desks broken open, his private books, letters and papers exposed to prying curiosity,

"and to the misconstructions of ignorant "and suspicious persons, and all this under "the direction of a mere ministerial officer, "who brings with him such assistants as he "pleases, and who will select them more "often with reference to physical strength "and courage than to their sensitive regard "to the rights and feelings of others. To "incline against the enactment of such laws "is to incline to the side of safety. In "principle they are objectionable; in the "mode of execution they are necessarily "odious, and they tend to invite abuse and "to cover the commission of crime. We "think it would generally be safe for the "Legislature to regard all those searches "and seizures 'unreasonable' which have "hitherto been unknown to the law, and on "that account to abstain from authorizing "them, leaving parties and the public to the "accustomed remedies."

Cooley's Constitutional Limitations (6th Ed.), pages 370-372.

But to return to the cases relied upon by the Court below. It will readily be seen that they come within the special class of cases mentioned by JUDGE COOLEY.

In GINDRAT *v.* THE PEOPLE (138 Ill., 103) the prosecution was for larceny of a diamond ring. The evidence showed that the defendants examined some rings in a jewelry store, but left without purchasing. Subsequently a diamond ring was found missing from the tray and a cheap imitation ring was found in its place. The defendants were arrested and the stolen ring was found near where they were taken into custody.

In a valise in their room a detective *found other similar imitation diamond rings*, which the Court admitted in evidence against the defendants' objec-

tion. These imitation diamond rings were clearly implements of crime, and in their nature contraband. They could not reasonably be held to be within the protection of the constitutional provision.

In COMMONWEALTH *v.* TIBBETS (157 Mass., 519) the defendant, a woman, was indicted and tried for the crime of an attempt to procure an abortion, and upon the trial *certain instruments, namely, a vaginal speculum, a glass syringe, a steel needle and a tin quart measure were offered and received in evidence against her.* These instruments, shown by competent testimony to be well adapted to the production of an abortion, were taken by one Tower, a police officer, from the defendant's house at a time when he went there with a search warrant calling for a search for intoxicating liquors in the premises of the defendant's husband, and on the same trial one Ashport, another police officer, produced two letters, which were also received in evidence, *as tending to connect the defendant with the commission of the crime charged*, though this officer also testified that he took the letters at a time when he was searching the premises of the defendant's husband for intoxicating liquors.

In that case the articles and the letters were really part of the res gestæ.

In STATE *v.* VAN TASSEL (103 Iowa, 6) the dedendant was tried for murdering his wife by poisoning.

Upon the trial a bond and certain letters containing his signature were offered in evidence. The defendant, who had taken the stand in his own behalf, on cross-examination, admitted the genuineness of the signatures, but objected to the admission of the papers in evidence on the ground that they had been surreptitiously taken from his possession. The letters, it appeared, were taken from a bureau which the defendant had moved, with its contents, to the house of his deceased

wife's parents, and which he had directed his mother-in-law to give to his little child. The bond was found in the house of the defendant's father-in-law, and in neither case were the papers under lock and key.

For these reasons the Court held that the papers were not taken surreptitiously and against the will of the defendant, and for that reason that there had been no unreasonable seizure within the meaning of the constitutional provision.

In CHASTANAY *v.* THE STATE (83 Alabama, 29) the defendant was tried for carrying *concealed weapons.* When he was arrested his pockets were searched and the pistol in question was found and seized. The pistol was, of course, in its nature, contraband.

In STATE *v.* FLYNN (36 New Hampshire, 64) the defendant was accused of a violation of the liquor law. That case did not involve in any way a question of unreasonable searches and seizures of private papers, but simply a question *as to the admissibility of the testimony of witnesses, as to what they had discovered during a search of the premises in which the liquor had been found.*

In WILLIAMS *v.* THE STATE (100 Ga., 511) the defendant was on trial for keeping open a tippling house on Sunday. Two officers went to her premises, took a purse from her apron pocket, examined the premises, and found there certain wines and whiskeys. On the trial the property so found was offered and received in evidence. *These articles clearly were in their nature contraband.*

In STATE *v.* ATKINSON (40 South Carolina, 363) the defendant was indicted for murder.

On the trial pieces of newspaper which had been found in the room occupied by the defendant, and which corresponded with pieces of newspaper picked up at the scene of the murder, supposed, from the stains upon it of blood and brains, to have been the wadding of the gun with which the shot

was fired, inasmuch as the printing on these papers indicated that they were taken from the same newspaper, were received in evidence against the defendant's objection.

These pieces of paper were in their nature incriminatory and of the same class as burglar's tools or other implements used in the commission of crime and shown by the other evidence to be part of the *res gestæ*.

In STATE *v.* KAUB (15 Missouri Appeals, 433) the indictment was for lottery, and the papers offered and received in evidence were *circulars and lottery tickets*.

In the opinion of the Court they were put in the same class as forged notes and burglar's tools, and it was upon the ground of their incriminatory character that they were admitted in evidence.

Coming down to the decisions in New York State, we find that the cases of RULOFF *v.* THE PEOPLE (45 N. Y., 213), PEOPLE *v.* GARDNER (144 N. Y., 119), and PEOPLE *v.* VAN WORMER (175 N. Y., 188), are cited and relied upon.

In the RULOFF case the defendant, in company with two other men, attempted burglary in the City of Binghamton, and while so doing one of the occupants of the premises was killed. Certain burglars' tools were found near the scene of the burglary and certain articles were found upon the bodies of two of the burglars who had been drowned in an attempt to escape, which tended to connect them with the defendant, and hence connect the defendant with the commission of the crime. Detectives visited his rooms in New York City, and they found certain burglars' tools, together with certain papers and articles in a desk, tending to fasten upon the defendant the occupancy and control of the room.

It does not appear in the report of the case as to just what the nature of the papers offered in evidence were, nor does it appear that any objection

was taken to the papers on the ground of their having been unreasonably procured. That decision, we respectfully submit, can in no sense be held as upholding the People's contention in the case at bar.

In PEOPLE *v.* GARDNER (*supra*), the defendant was compelled to stand up and was then identified by a witness as the individual he had seen upon an occasion having a material bearing upon the case.

There was no question in that case of unreasonable search and seizure; and it was held that being compelled to stand up simply for the purpose of identification was not compelling him to give evidence against himself.

In PEOPLE *v.* VAN WORMER (*supra*), after the arrest of the defendants their shoes were taken from them and placed in footmarks leading to the house of the deceased made in newly-fallen snow on the night of the murder.

Upon the authority of the decision in the GARDNER case (*supra*) the Court of Appeals held that the reception of the evidence was not a violation of the defendant's constitutional rights.

From this analysis of the cases it clearly appears that none of them is applicable to the case at bar, as they all concern articles or papers either a part of the *res gestæ* of the offense sought to be proved or in their nature contraband; and for that reason the State was entitled to their possession.

While the expressions in some of the opinions are broad enough to cover this case, we submit, to that extent at least, they must be held to be erroneous.

(*d*). The protection of the constitutional provision must be held then, we submit, to be directed, not only against the unlawful seizure, BUT AGAINST THE UNLAWFUL USE AFTER SEIZURE.

The question in every case is: Has the defendant waived or forfeited his constitutional right of protection?

If not, the fact of custody is immaterial.

If a statute had authorized the things to be done that were done, we cannot doubt but that it would be held to be absolutely unconstitutional and void.

Yet it must be remembered that a trial and conviction *in an unconstitutional way is as violative of a defendant's constitutional rights as a trial and conviction under an unconstitutional law.*

Ex parte Neilsen, 131 U. S., 176.

Point III.

The statute, Sections 344a and 344b, under which the indictment was found and the conviction was had, are unconstitutional and void in that thereby the defendant has been deprived of his liberty and property without due process of law, and has been denied the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution.

First.—This point also, as a Federal question, was presented to and considered by the Court of Appeals of the State of New York on appeal from the judgment rendered.

In the opinion written, the precise point now urged is stated:

> "The next point argued by the appellant's
> " counsel is, that Sections 344a and 344b of
> " the Penal Code, under which the indict-
> " ment was found and the conviction had,
> " are unconstitutional and void, for the
> " reason that the defendant has been de-
> " prived of his liberty and property without

" due process of law, in violation of both the " Federal and State Constitutions."

See Opinion, BARTLETT, J., Record, page 116.

The learned Judge then called attention to the fact that no exception was taken to the charge of the Court respecting the application and limitations of the statute, but as the Court considered it a question of public importance, they disregarded the alleged waiver and considered the merits.

See Opinion, BARTLETT, J., Record, page 117.

In view of the fact that the State Court overlooked the absence of an exception, and proceeded to consider the question as if properly raised, we submit their action is sufficient warrant for the review by this Court in any event.

But as we read the decisions, the presence of an exception is immaterial.

If a person has been deprived of his liberty, *without due process of law*, an exception is not necessary to raise that question before an appellate court; nor can a party charged with crime by any act of his waive his right to a trial in the way provided by law.

Among many decisions we refer to the following:

Hopt *v.* Utah, 110 U. S., 574.
Thompson *v.* Utah, 170 U. S., 343.
Cancemi *v.* The People, 10 N. Y., 128.
Maurer *v.* The People, 43 N. Y., 1.
Messner *v.* The People, 45 N. Y., 1.
People *v.* Bradner, 107 N. Y., 1.
Matter of Langslow, 167 N. Y., 314.

In THOMPSON *v.* UTAH (*supra*) this Court, speaking by MR. JUSTICE HARLAN, said:

"It is said that accused did not object, until after verdict, to a trial jury composed of "eight persons, and therefore he should not "be heard to say that his trial by such a jury "was in violation of his constitutional rights. "It is sufficient to say that it was not in the "power of one accused of felony, by consent "expressly given or by his silence, to authorize a jury of only eight persons to pass "upon the question of his guilt. The law in "force when this crime was committed did "not permit any tribunal to deprive him of "his liberty, except one constituted of a "jury of twelve persons.

* * * * * *

"If one under trial for a felony, the punishment of which is confinement in a penitentiary, could not legally consent that the "trial proceed in his absence, still less could "he assent to be deprived of his liberty by a "tribunal not authorized to determine his "guilt."

Thompson *v.* Utah (*supra*).

In PEOPLE *v.* BRADNER (*supra*) the rule is stated thus:

"If the record discloses upon its face that "the Court had no jurisdiction, or that the "constitutional method of trial by jury was "disregarded (Cancemi's case, 18 N. Y., 128), "or some other defect in the proceedings, "which could not be waived or cured and is "fundamental, it would, as we conceive, be "the duty of an appellate tribunal to reverse "the proceedings and conviction, although "the question had not been formally raised "in the court below, and was not presented "by any ruling or exception on the trial."

People *v.* Bradner (*supra*).

In view of the rule stated in these decisions, and in view of the fact that the State Court considered and passed upon the questions now sought to be reviewed, the absence of an exception in the record, we *submit, is immaterial.*

Second.—THE STATUTE (SECTION 344A) IS AN ARBITRARY EXERCISE OF POWER, BECAUSE IT MAKES THE POSSESSION OF ARTICLES OF A NATURE SIMILAR TO OTHERS IN UNIVERSAL USE AND IN THEMSELVES HARMLESS AND INCAPABLE OF INJURY TO OTHERS A CRIMINAL OFFENSE.

(*a*). The provisions of Section 344a, in so far as they are material to the discussion under this point, are to the following effect:

> "A person * * * *who shall have in "his possession knowingly any writing, "paper or document representing or being a "record of any chance, share or interest in "numbers sold, drawn or to be drawn in "what is commonly called policy,* * * * or "any paper, drawing, writing, numbers, de-"vice, policy slip, or article of any kind such "as is commonly used in carrying on, pro-"moting or playing the game commonly called "policy,* * * * is a common gambler "and punishable by imprisonment for not "more than two years, and in the discretion "of the Court by a fine not exceeding $1,000, "or both."

See Penal Code, Sec. 344a.

(*b*). The arbitrary character of the statute becomes apparent when we consider the method of playing the game of policy and the nature of the articles or implements used therein.

By the testimony adduced, it was shown that the game is conducted in the following way: A person desiring to play goes to a shop where the game is

being carried on, and the keeper of the shop, the person backing the game, writes down on carbon alternate sheets the numbers which this person plays or bids on; for instance, 4–11–44. This combination is called a "gig," and the alternate sheets are what are known as "manifold sheets." A piece of paper or ticket with the combination played by the person entering the game is handed to him, and this is known as a "policy slip," Drawings are held usually twice a day; the successful combinations are then announced and the persons playing the successful combinations receive their money.

After this drawing both the "manifold sheets" and the "policy-slips" become entirely worthless so far as any future participation in the game is concerned. They then become simply pieces of paper with combinations of figures written upon them.

NEITHER THE "SLIPS" NOR THE "SHEETS" CAN EVER AGAIN BE USED IN CONNECTION WITH THE GAME OF POLICY.

We take it that no one would contend for a moment that the legislature could make the possession of harmless pieces of paper, whether with or without combinations of figures written upon them, a crime. *Such articles by themselves are commercial commodities in universal use.* Nevertheless the statute under discussion is broad enough to make *the possession of a harmless piece of paper by a person having no criminal intent*, a felony, punishable by fine and imprisonment in the penitentiary; and in addition, to brand the person in whose possession such paper is found *a common gambler*. In fact, so far as the present case is concerned, it was entirely upon the alleged possession of manifold sheets *relating to games already played and without proof of criminal intent or criminal use by him* that the defendant was convicted.

The statute then, we submit, is wholly arbitrary, because it makes an entirely innocent act a highly

penal offense. This, we submit, the Legislature has not the power to do.

People *v.* Gillson, 109 N. Y., 389.
Matter of Jacobs, 98 N. Y., 98.
People *v.* Marx, 99 N. Y., 377.
People *v.* Arensberg, 103 N. Y., 388.
Forster *v.* Scott, 136 N. Y., 577.

In PEOPLE *v.* GILLSON (*supra*) the provision of the Penal Code of the State of New York, prohibiting the sale or disposal of any article of food or any offer or attempt to do so upon any representation or endorsement that anything else would be delivered as a gift, prize, premium or reward to the purchaser, was held to be in violation of the constitutional provision giving to every person liberty and property unless he is deprived thereof by due process of law.

In the opinion, which was written by MR. JUSTICE PECKHAM, now of this Court, as to the right of arbitrary interference by the Legislature with the rights of the citizen, it was said:

> "But there is a limit to such interference
> "in my judgment, and there does come a
> "time when the constitutional provision, so
> "often herein quoted, steps in to protect the
> "citizen.
>
> "As an act in furtherance of the public
> "health or morals, no one at this period of
> "the history of man would, I think, regard
> "it as legal to enact in this State (changing
> "the verbiage to suit the altered condition of
> "the race in this country) that no man or
> "woman under the rank specified in the law
> "should thereafter wear fur on his or her
> "clothes, or that no knight under the degree
> "of a lord should wear shoes or boots having
> "pikes in them more than two inches long.
> "* * * *Nor can this act stand as a valid*

" *exercise of legislative power to enact what*
" *shall amount to a crime.* The power of the
" legislature to so declare is exceedingly
" large, and it is difficult to define its exact
" limit. But that there is a limit even to that
" power under our Constitution, we entertain
" no doubt, and we think that limit has been
" reached and passed in the act under review.

" The power has been unlawfully exercised
" in this instance for the same reasons that
" we have already stated, because it violates
" the constitutional provision which secures
" to each person in this State his liberty and
" property, except as he shall be deprived
" of one or both by due process of law."

People *v.* Gillson (*supra*).

So in the case at bar, we submit, the legislative power to enact *what shall amount to a crime* has been exceeded in the statute under discussion, as it makes an entirely innocent act a criminal offense and unjustly deprives a person accused of his liberty without due process of law.

Third.—NOT ONLY IS THE STATUTE, SECTION 344A, UNCONSTITUTIONAL, BUT SECTION 344B, PRESCRIBING WHAT SHALL BE PRESUMPTIVE EVIDENCE OF POSSESSION KNOWINGLY UNDER SECTION 344B, IS ALSO UNCONSTITUTIONAL.

(*a*). In connection with and in explanation of Section 344a above quoted, it is prescribed by Section 344b that

" *The possession by any person,* OTHER
" THAN A PUBLIC OFFICER, *of any article,*
" *paper or document, representing or being a*
" *record of any chance, share or interest in*
" *the numbers sold, drawn or to be drawn in*
" *what is commonly called policy, or in the*
" *nature of a bet, wager, or insurance upon*

"*the drawing or drawn numbers of any*
"*public or private lottery, or any paper*
"*print, writing, numbers or device, policy,*
"*slip or article of any kind such as is com-*
"*monly used in carrying on, promoting or*
"*playing the game commonly called policy*
"IS PRESUMPTIVE EVIDENCE OF POSSESSION
"THEREOF, KNOWINGLY AND IN VIOLATION OF
"THE PROVISIONS OF SECTION 344a.

See Penal Code, Sec. 344b.

(*b*). We contended before the State Court that the two sections referred to, being part of one enactment, should be read together, but with our contention the learned Court said that it was unable to agree.

In its view "Section 344a creates the crime of
" which the defendant stands convicted; it is com-
" plete in itself and is in no way dependent upon
" the provisions of Section 344b. The latter ob-
" jection establishes a rule of evidence only."

People *v.* Adams, Opinion BARTLETT, J., Record, page 116.

We do not, however, deem the point of very great importance, because even conceding that the statutes must be construed separately, nevertheless the trial and conviction in the case at bar was had under both of the Sections; and although the offense and punishment were embraced wholly within Section 344a, the conviction of the defendant of that offense and the imposition of the punishment were brought about under and by virtue of the provisions of Section 344b.

That it was wholly by virtue of the provisions of Section 344b that he was found guilty, clearly appears from the proceedings upon the trial. The jury, after being out nearly four hours, returned with the statement that they could not

agree. After being further instructed by the Court, they returned to their deliberations, and again, after nearly seven hours, returned for further instructions as to whether they were to understand that proof of simple possession of policy slips was presumptive evidence of possession thereof knowingly, and upon this point the Court said:

> "That is precisely the language that the "Code provides shall be presumptive evi- "dence of possession knowingly. If you "find that a man or this defendant had in "his possession these papers, which were "policy slips used in the game of policy, "that mere fact of possession by him is "presumptive notice under the statute that "he held them, and had possession of them "knowingly."

See Record, page 92.

This language is, in effect, a practical direction of a verdict against the defendant.

And it is clear, we submit, that the jury relied entirely upon the presumption created by the statute as evidence sufficient to convict. In fact there was absolutely no other proof than the mere fact of possession to connect the defendant with the offense.

Therefore, even though, Section 344a, standing by itself, be held to be constitutional, if 344b be unconstitutional, the defendant has just cause for complaint.

(*c*). THE ARTIFICIAL PRESUMPTION OF GUILT CREATED BY SECTION 344b TAKES AWAY FROM A PERSON ACCUSED HIS RIGHT TO BE PRESUMED INNOCENT UNTIL HE IS PROVED TO BE GUILTY, AND DEPRIVES HIM OF HIS LIBERTY AND PROPERTY WITHOUT DUE PROCESS OF LAW WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT.

1st. Under the provisions of Section 344b, after the mere fact of possession is shown, without proof of any criminal intent on the part of the person in whose possession the articles are found, and without proof that he had used, or intended to use, such articles in connection with, or in playing the game of policy, the prosecution may rest. Thereupon, the presumption of guilt attaches to the accused, and the burden of proof is shifted to him to prove his innocence; otherwise upon the mere proof of possession, it is the duty of the jury under the legislative mandate to convict.

The jury thus is not made the triers of fact as to the guilt of the accused, but in the absence of other evidence, triers simply of the *single fact of possession*, and which fact, when found, the Legislature itself has declared is presumptive evidence of guilt.

This then is not a case where the Legislature has simply prescribed *a rule of evidence*, but where it has itself assumed the right to pass upon the guilt or innocence of a party accused, and to say what the jury shall consider *not mere evidence of the offense*, BUT PRESUMPTIVE EVIDENCE OF GUILT.

The language of the statute is that possession "is PRESUMPTIVE EVIDENCE *of possession thereof knowingly and in violation of the provisions of Section 344a.*"

See Penal Code, Sec. 344b.

2d. The Appellate Division in the First Department, in the case of PEOPLE *ex rel.* WILSON *v.* FLYNN (72 App. Div., 67), construed Section 344a to mean that before the offense is committed it must be made to appear that the articles were in use in connection with a place used for doing the prohibited acts, and *that the use of these articles, disconnected from their use in playing the game*, is not made an offense under the provisions of that section.

Conceding this to be the true construction of the statute, then the violence of the presumption is

apparent, because if a person in no way connected with the game should find one of these pieces of paper in the street and pick it up simply from curiosity, and it should subsequently be found in his possession, he could be tried and convicted without any other evidence of the offense prescribed by Section 344a; or if he should simply make a copy of a "policy slip," or a "manifold sheet," to gratify some mere personal whim, without any intention of playing the game, the mere possession of that harmless bit of paper, neither representing a chance in the game, or capable of being used therein, would be sufficient to convict him of the crime of having in his possession a paper *of a kind* used in playing or carrying on the game, and under the statute he would be, on conviction, a common gambler.

The presumption of guilt created by the statute thus eliminates all question of *criminal intent*, which, it would seem, is a necessary ingredient of the offense under Section 344a.

U. S. *v.* Carll, 105 U. S., 611.

Take another instance: The game of policy is not confined to the State of New York, but is played in every State of the Union as well as in foreign countries. If, however, any articles relating to a game played or to be played in London or Paris, or in Philadelphia or Boston, and sold in those places, should be found in the possession of a person in the State of New York, the mere fact of possession, *though the game was not played nor to be played there, nor though the articles were not sold there*, would be PRESUMPTIVE EVIDENCE that such articles had been used, or were intended to be used, in a game in New York State, and in violation of the laws of that State. But as we have shown, "policy slips" or "manifold sheets" can only be used *in connection with the game to which they relate*. For all other purposes they are harmless pieces of paper.

THUS AN ACT WHICH IS NOT AN OFFENSE AGAINST THE NEW YORK LAWS, NOR PUNISHABLE BY THE NEW YORK LAWS, IS MADE PRESUMPTIVE EVIDENCE OF AN OFFENSE AGAINST AND PUNISHABLE BY SUCH LAWS.

These illustrations show that an act entirely innocent in itself, and having no relation to the offense, under Section 344a, is made presumptive and sufficient evidence of guilt under Section 344b.

In the reign of Henry VIII the Countess of Salisbury had become obnoxious to him on account of her son, Cardinal Pole. Charges were made against her, but they could not be sufficiently proved, and the King determined to procure her destruction in a summary way. Being advised by his judges that if a person was attainted, the attainder could never afterwards be brought into question, a bill was brought into the House of Lords to attaint her of treason. The only thing like proof before the Parliament was that Cromwell showed to the House a banner, on one side of which were embroidered the five wounds of Christ, the symbol chosen by the Northern rebels; on the other side the Arms of England, which banner he said was found in the house of the Countess.

This was considered as sufficient evidence of her approving that rebellion.

Reeves' Hist., Vol. IV, page 555.

The presumption created by the statute under consideration is quite as arbitrary and absurd.

3d. While in an action of a civil nature, and to some extent, even in criminal prosecutions, the Legislature may prescribe what *shall be evidence* against the accused; yet, where the Legislature arrogates to itself the right to pass upon the *sufficiency of such evidence*, and to declare that, in the absence of other evidence, a certain proved fact shall be

deemed sufficient evidence of guilt, such an act is, we submit, wholly beyond their power.

We have express authority for this statement by a decision of the Supreme Court of Rhode Island, and also one by the Court of Appeals of the State of New York.

State *v.* Beswick (13 R. I., 211).
Wynehamer *v.* The People (13 N. Y., 378).

In the Rhode Island case the Legislature of that State passed a law in regard to the sale of liquors, to the effect that it should not be necessary to prove an actual sale, but "that the notorious character "of any such premises, or the notoriously bad or "intemperate character of persons frequenting the "the same, or the keeping of the implements or "appurtenances usually appertaining to grog shops, "distilling place or places where such liquors are "sold, shall be *prima facie* evidence that said liquors "are kept on said premises for the purpose of sale "within this State."

It was held that this statute was unconstitutional and void and deprived a person accused of the offenses therein enumerated of his liberty without due process of law.

The opinion states:

> "The State submitted in support of the "complaint, besides other evidence, evidence "to show that the place kept by the defend- "ant had the reputation of being a grog "shop; that it was frequented by men of "intemperate habits, and that the imple- "ments and appurtenances were there which "are usually to be found in a grog shop. "The defendant offered no testimony, but "requested the Court in effect to instruct the "jury that they could not find him guilty "unless they were convinced of his guilt

" beyond a reasonable doubt, and that tes-
" timony of the kind above recited would
" not of itself be sufficient to warrant a con-
" viction.

" The Court did not comply with these
" requests, but instructed the jury as fol-
" lows, to wit: *Prima facie* evidence is that
" which appears to be sufficient proof respect-
" ing the matter in question until something
" appears to controvert it; but which may
" be contradicted, rebutted or explained.
" *Prima facie* evidence is sufficient to estab-
" lish the fact unless rebutted; hence if the
" character of the place as one notorious for
" the sale of liquors, or if the fact that the
" usual implements and appurtenances were
" kept there are proved to your satisfaction,
" that is sufficient to convict if not rebutted."

" The defendant excepted both to the
" charge and to the refusals to charge. It
" will be observed that the statute makes
" proof of the facts mentioned in it, not
" only evidence against the accused, but
" *prima facie evidence of his guilt, so that*
" *upon proof of them it is not only the*
" *right but the duty of the jury to convict*,
" unless the presumption is rebutted by other
" evidence, though, of course, such other
" evidence may be elicited from the witnesses
" for the State, as well as given by the wit-
" nesses for the defendant.

" The question then is, whether the statute
" is constitutional which makes it the duty
" of a jury empanelled to try a complaint
" for unlawfully keeping liquors for sale
" to convict the accused upon simple proof
" that his place of business is notorious as a
" place where liquors are unlawfully kept for
" sale or upon simple proof that the place is
" frequented by persons of notoriously bad
" or intemperate character, or upon proof

" that he has there the implements and ap-
" purtenances of a grog shop or distilling
" shop without more, unless there be other
" evidence to rebut or control it. We have
" very carefully considered the question, and
" have come to the conclusion that the stat-
" ute is not constitutional. It virtually
" strips the accused of the protection of the
" common-law maxim, that every person is
" to be presumed innocent until he is proved
" guilty, *which is recognized in the Constitu-*
" *tion as a fundamental principle of juris-*
" *prudence*, and we think it is repugnant to
" the constitutional provision that the ac-
" cused shall not be deprived of life, liberty
" or property unless by the judgment of his
" peers or the law of the land. What is
" meant by the judgment of his peers is the
" judgment of a jury, and certainly the
" accused does not have the judgment of a
" jury if the jury is compelled by an artificial
" rule to convict him, whether they think
" him guilty or not, upon proof of a fact
" which is consistent with his innocence, and
" which is so consistent with his innocence
" that proof of it at common law would not
" even be admissible against him. Suppose
" that the general assembly were to enact
" that if any person were generally reputed
" to be guilty of a murder, it should be *prima*
" *facie* evidence that he was guilty, and that
" some citizens were convicted and sentenced
" to death or imprisonment on such evidence
" because in the absence of rebutting evi-
" dence the jury had no option to acquit him.
" Could it be said that his life or liberty had
" been taken from him by the judgment of
" his peers? We think not. The judgment
" of the jury would not have been taken or
" the question of his guilt, but only on the
" question whether or not he was generally

" reputed guilty. So under the statute here " a man may be convicted of unlawfully " keeping intoxicating liquors for sale upon " proof that his place of business is generally " reputed to be a liquor shop without the " jury actually passing any judgment on the " question of his guilt.

" The provision is that the accused shall " not be deprived of his life, liberty or prop- " erty, unless by the judgment of his peers " or the law of the land. It may be argued " that even if the accused does not have the " judgment of his peers, he is, nevertheless, " convicted by the law of the land. This " phrase has a historical origin. It was bor- " rowed from Magna Charta and as has been " repeatedly decided, means the same as due " process of law. The question is whether if " a man is convicted on the testimony indi- " cated, and under the rule prescribed by the " statute, he is convicted according to due " process of law. The answer to the ques- " tion depends on the meaning of the phrases " 'due process of law' and the 'law of the " land.' The phrases have never received a " perfectly satisfactory definition. One or " the other of them occurs in all, or nearly " all, the constitutions of the several states " and in the Constitution of the United " States, and it is well settled that the pro- " visions in which they occur are intended " to operate as limitations on the legislative " power of the several states and of the " United States. It follows if the provision " is a limitation on the legislative power that " a legislative enactment is not necessarily " the law of the land, even when it does not " conflict with any other provision of the " the Constitution, and that a proceeding " according to a legislative enactment is not " necessarily due process of law.

"It is also settled that these provisions " secure to every citizen, except in the mat- " ter of taxation, a judicial trial, and before " he can be deprived of life, liberty or prop- " erty.

"The definition of due process of law given " by Judge Edwards in Westervelt *v.* Gregg " (12 N. Y., 202), is quoted by Judge Cooley " in his work on constitutional limitations, " 355, with approval, and is, in our opinion, " not only concise, but very accurate. Due " process of law undoubtedly means, he " says, 'in the due course of legal proceed- " ings according to those rules and forms " which have been established for the pro- " tection of private rights.' The effect in " criminal prosecutions is to secure to the ac- " cused, before condemnation, a judicial trial.

"If not strictly in all points according to " the common law, at least, not in violation " of those fundamental rules and principles " which have been established at common " law for the protection of the subject or the " citizen. Among these rules there is none " which is more fundamental than the rule " that every person shall be presumed inno- " cent until he is proved guilty. 'The rule,' " said Judge Selden in the People *v.* Toyn- " bee (2 Parker's Criminal Cases 490), "will be " found specifically incorporated into many " of our State Constitutions, and is one of " those rules which in our Constitution are " compressed into the brief, but significant " phrase "due process of law."' Indeed to " hold that a legislature can create artificial " presumptions of guilt from facts which are " not only consistent with innocence, but " which are not even a constituent part of " the crime when committed, is to hold that " it has the power to take away from a ju- " dicial trial, or at least substantial rights in

" it, the very elements which make it judi-
" cial. To hold so is to hold that the legisla-
" ture has powers to bind and circumscribe
" the judgments of courts and juries in mat-
" ters of fact and in an important measure
" to predetermine their decisions and ver-
" dicts for them. It is true, the accused has
" the right of defense left to him and may,
" if he can, adduce satisfactory evidence,
" rebut statutory presumptions; but the pro
" duction of such evidence is not always easy,
" even with the right to testify in his own
" behalf; *and the right to testify in his own
" behalf having been granted, can be abrogated
" by the Legislature.* It is not one of those
" great and immemorial rights which lie im-
" bedded in the phrase 'the law of the
" land.'"

State *v.* Beswick, 13 R. I., 211.

Similar views were expressed in a subsequent decision in that State in

State *v.* Kartz, 13 R. I., 528.

In the State of New York an act to prevent intemperance (Laws of 1855, page 340), one of the provisions of which was to the effect that "upon the trial of any complaint commenced under any provision of this act, proof of the sale of liquor shall be sufficient to sustain an averment of an unlawful sale, and proof of delivery shall be *prima facie* evidence of sale," was held to be unconstitutional and void.

As to the validity of this provision SELDEN J. said:

" Precisely how far the Legislature may go,
" in changing the modes and forms of judi-
" cial proceeding, I shall not attempt to de-
" fine; but I have no hesitation in saying

31839

" *that they cannot subvert that fundamental*
" *rule of justice which holds that every man*
" *shall be presumed innocent until he is*
" *proved guilty.* This rule will be found
" specifically incorporated into many of our
" State Constitutions, and is one of those
" rules which, in our Constitution, are com-
" pressed into the brief but significant phrase,
" 'due process of law.' "

" Can Section 17 be reconciled with this
" rule?

" It provides that, upon every prosecution
" under the act, proof of a sale of liquor
" shall sustain an averment of an unlawful
" sale, and proof of delivery shall be *prima*
" *facie* evidence of a sale. It is plain that at
" common law the legal presumption would
" be directly the reverse of that declared by
" the act. Where the common law would
" presume innocence, this act presumes guilt.
" Either the guarantee of a judicial trial, ac-
" cording to the course of the common law,
" is a nullity, or this provision is void. But
" I am prepared to go further, and to hold
" that all those fundamental rules of evi-
" dence, which in England and in this coun-
" try have been generally deemed essential
" to the due administration of justice, and
" which have been acted upon and enforced
" by every court of common law for cen-
" turies, are placed by the Constitution be-
" yond the reach of legislation. They are but
" the rules which reason applies to the in-
" vestigation of truth, and are, of course, in
" their nature unchangeable. If it does not
" follow that to determine what they are, as
" applicable to judicial proceedings, is a judi-
" cial and not a legislative power still they
" must necessarily be included in the phrase,
" 'due process of law.' If this be not the
" true interpretation of the Constitution; if

"the Legislature, in addition to declaring
"what acts and what intentions shall be
"criminal, can also dictate to courts and
"juries the evidence, and change the legal
"presumptions upon which they shall con-
"vict or acquit, there is no barrier to legisla-
"tive despotism; and the separation of the
"legislative and judicial departments of the
"government, the guarantee of trial by jury,
"and of a trial according to the course of the
"common law, have all failed to afford any
"substantial security to individual rights."

Wynehamer *v.* The People (*supra*), pages 444–447.

These views we believe to be sound and particularly applicable to the present case.

The statute under consideration is not unlike the "Test Case" laws, and is, to all intents and purposes, a bill of pains and penalties, in which, in the words of MR. JUSTICE FIELD:

"The legislative body, in addition to its
"legitimate functions, exercises the powers
"and office of judge; it assumes, in the lan-
"guage of the text books, judicial magis-
"tracy; it pronounces upon the guilt of the
"party, without any of the forms or safe-
"guards of trial; it determines the sufficiency
"of the proofs produced, whether conform-
"able to the rules of evidence or otherwise;
"and it fixes the degree of punishment in
"accordance with its own notions of the
"enormity of the offense."

Such a bill, according to the learned Judge, is embraced within the meaning of the Constitution prohibiting the passing of laws of attainder.

Cummings *v.* Missouri, 71 U. S., 277.

See also

Green *v.* Shumway, 39 N. Y., 418.

4th. The decision referred to by JUSTICE BARTLETT, PEOPLE *v.* CANNON (139 N. Y., 32), in which the opinion was written by MR. JUSTICE PECKHAM, now of this Court, does not hold views contrary to those now contended for.

In that case a statute was held to be constitutional which made the possession by a junk dealer or dealers of second-hand articles of bottles used in the sale of soda waters and beer *prima facie* evidence of their use unlawfully.

That case, however, is very different from the statute now under consideration, as such articles were in their nature proprietary and protected by statute *against use by other persons.*

In that case possession by a person other than one whose name was branded on the bottle, was reasonable ground for the presumption that possession had been obtained unlawfully, as that mark was evidence of the proprietary character of the article and was intended *to protect the owner in his use thereof.* That case is within the class of cases where proof of possession of stolen property is held to afford a presumption that the possessor is guilty of larceny.

> Knickerbocker *v.* The People, 43 N. Y., 117.

Under such circumstances *there is a direct connection between the fact from which the presumption was to flow and the guilt of the accused.*

The same may be said of the decision in PEOPLE *v.* BUFFALO FISH COMPANY (164 N. Y., 93), which is to the effect that the possession of fish of the species prohibited by the statute shall be *prima facie* evidence of such possession in violation of law. The real question decided in that case, however, was not as to the provision making possession *prima facie* evidence, but as to interpretation and the constitutionality of the statute as a police regulation.

Fourth.—SECTION 344B IS ALSO UNCONSTITUTIONAL, BECAUSE IT DENIES TO PERSONS ACCUSED THE EQUAL PROTECTION OF THE LAWS.

By Section 344b the possession by any person, "*other than a public officer*," of any article or paper connected with the game of policy, or of a kind used in the carrying on that game, is made presumptive evidence of possession thereof knowingly in violation of Section 344a.

Thus every holder of public office, from the Governor of a State down to a person holding the office of notary public, is exempt from the presumption of guilt, which attaches to every other person in whose possession such articles are found.

Every person, *except a public officer*, when tried for the offense, must, after the simple fact of possession has been shown, rebut the presumption of guilt by offering evidence in his behalf.

A person holding a public office, however, whether the office held is such as would entitle him, in the performance of his duties, to have possession of such articles or not, is not put upon his defense, and cannot be convicted under the statute *until further proof than the mere fact of possesion is made by the prosecution.*

The reason why the simple fact of possession by a private citizen should be made *prima facie* evidence of guilt, and that fact in the case of a public officer not also be given equal weight, is not apparent.

It is a purely arbitrary distinction, we submit, having no basis in fact upon which to rest, and denies the equal protection of the laws.

Our contention in this regard was answered by the Court of Appeals in the following way:

> "The appellant, in discussing this section,
> "raised the additional point that it is class
> "legislation, for the reason that it excepts

"from its provisions public officers. It is "argued that a notary public is a public "officer, and that he might be knowingly in "possession of these papers used in the game "of policy with impunity.

"It is true, if we give a literal construction "to the language of this section that the "statement is warranted; but the rule is "that all statutes must be reasonably con- "strued, and in this case it is obvious that "the Legislature intended to except those "officers who, in the discharge of their "official duties, were necessarily, at times, "the custodian of these papers."

While, of course, we are aware that this Court will in most instances adopt the construction of a State statute made by the State Court, nevertheless, we submit, where the language of a criminal act is plain and unambiguous, there is no room for construction, and the Court is not justified in departing from the plain language of the statute in search of an intention which the words themselves do not suggest.

U. S. *v.* Wiltberger, 5 Wheaton, 76.

To quote the words of CHIEF JUSTICE MARSHALL in that case:

"*It is the Legislature, and not the Court,* "*which is to define a crime and ordain its* "*punishment.*"

The statute being highly penal, must, we submit, receive a strict construction, and the intention of the Legislature is to be gathered from the words they employ.

Giving, then, the statute the meaning which its plain words require, it is clearly class legislation,

and denies to the defendant equal protection of the laws, as it makes an act presumptive evidence of his guilt, which would not be so considered in the case of a person holding a public office being accused of a similar offense.

That such legislation is unconstitutional and void is beyond question.

Cooley's Cons. Lim. (6 Ed.), 481–483.

Point IV.

This Court should not, and will not, be influenced in its decision of the questions presented on any grounds of expediency or overruling necessity.

A ruling adverse to the views contended for would work more harm to the innocent than to the guilty. There are ample ways to prove a person charged with crime guilty of the offense without the invasion of his premises and the ransacking of his private papers, and without creating an arbitrary presumption of guilt against him.

In this connection we may well bear in mind the words of JUDGE BRONSON, in the case of MADAM RESTELL, that—

> "It is better that the guilty should some-
> "times go free than that the innocent be
> "subjected to such an ordeal. * * * *
> "In our zeal to punish crime, great care
> "should be taken not to make precedents
> "which may prove dangerous to the inno-
> "cent, and it should never be forgotten that

"even the guilty have rights which should
"be scrupulously guarded."

People *v.* Restell, 3 Hill, 289.

Point V.

The judgment should be reversed.

L. LAFLIN KELLOGG,
ALFRED C. PETTÉ,
Counsel for the Plaintiff in Error.

FILE COPY. 31845

Office Supreme Court U.S.
FILED
DEC 16 1903
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States,

OCTOBER TERM, 1903.

ALBERT J. ADAMS,
Plaintiff-in-Error,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Defendant-in-Error.

No. 504.

Memorandum Concurring in Motion to Advance.

The defendant-in-error, while taking issue with the contention of the plaintiff-in-error that any Federal questions are involved in this appeal, concurs in the motion to advance this cause, and respectfully urges that it be set down for a hearing at the earliest day consistent with the convenience of the Court, on the following grounds, namely:

That the statute under which the plaintiff-in-error was convicted is an important enactment conceived for the purpose of suppressing what is universally realized to be one of the most insidious classes of petty gambling; that many prosecu-

tions under this statute are now pending, and that prosecutions under it are constantly being initiated, and that it is therefore a matter of great public importance that all doubts as to the constitutionality of the statutes shall be set at rest.

Respectfully submitted,
WM. TRAVERS JEROME,
District Attorney.

HOWARD S. GANS,
Assistant District Attorney,
Of Counsel for Defendant-in-Error.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1903.

ALBERT J. ADAMS,
Plaintiff-in-Error,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Defendants-in-Error.

No. 504.

Brief of Defendants-in-Error.

Statement.

This is a writ of error to the Supreme Court of the State of New York to review a judgment of that Court convicting the defendant of the crime of having in his possession certain gambling paraphernalia used in the game commonly known as policy, in violation of Section 344a of the Penal Code of said State.

The judgment of conviction was entered in the Supreme Court of the State of New York on the 21st day of April, 1903, after a trial before one of the Justices thereof and a jury (p. 5).* From this judgment of conviction an appeal was taken to the Appellate Division of the said Supreme Court, and upon the affirmance of the judgment by that Court

* The references are to the page numbers at the top of the pages in the transcript of record.

(p. 109), a further appeal was taken to the Court of Appeals, where the order of the Appellate Division was affirmed (pp. 111, 112). Thereafter, and on the 17th day of November, 1903, an order was duly made by the Supreme Court, directing that the judgment and order of the Court of Appeals be made the judgment of that Court, and that the judgment of conviction be enforced and carried into execution and effect. And thereafter, and on the 20th of November, 1903, Mr. Justice Peckham allowed the writ of error herein.

The Statutes.

The provision of the Code under which the conviction herein was had is as follows:

"SECT. 344a.—KEEPING PLACE TO PLAY POLICY.—A person who keeps, occupies or uses, or permits to be kept, occupied or used, a place, building, room, table, establishment or apparatus for policy playing or for the sale of what are commonly called 'lottery policies', or who delivers or receives money or other valuable consideration in playing policy, or in aiding in the playing thereof, or for what is commonly called a 'lottery policy', or for any writing, paper or document in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery; *or who shall have in his possession, knowingly, any writing, paper or document, representing or being a record of any chance, share or interest in numbers sold, drawn or to be drawn, or in what is commonly called 'policy'*, or in the nature of a bet, wager or insurance, upon the drawing or drawn numbers of any public or private lottery, *or any paper, print, writing, numbers, device, policy slip or article of any kind such as is commonly used in carrying on, promoting, or playing the game commonly called 'policy'*; or who is the owner, agent, superintendent, janitor or caretaker of any place, building or room where policy play-

ing or the sale of what are commonly called 'lottery policies' is carried on with his knowledge or after notification that the premises are so used, permits such use to be continued, or who aids, assists or abets in any manner, in any of the offences, acts or matters herein named, is a common gambler and punishable by imprisonment for not more than two years, and in the discretion of the Court, by a fine not exceeding one thousand dollars, or both."

A further provision of law relating to the foregoing, and necessary to an intelligent understanding of the questions sought to be raised herein, is the following:

"SEC. 344b. POSSESSION OF POLICY SLIP, ETC., PRESUMPTIVE EVIDENCE.—The possession, by any person other than a public officer, of any writing, paper, or document representing or being a record of any chance, share or interest in numbers sold, drawn or to be drawn, or in what is commonly called 'policy', or in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery, or any paper, print, writing, numbers or device, policy slip or article of any kind, such as is commonly used in carrying on, promoting or playing the game commonly called 'policy', is presumptive evidence of possession thereof knowingly and in violation of the provisions of Section three hundred and forty-four a."

The Facts.

On the 12th day of December, 1901, the defendant (plaintiff-in-error) had in his possession a large number of documents of a character forbidden by this statute. The documents were found in a room purporting to be the defendant's private office, and were seized by officers of the law purporting to act under a search warrant. At the time of the seizure of these papers, there were seized also certain of the defend-

ant's private papers and documents, and these private papers and documents, as well as the papers relating to the game of policy, were introduced in evidence upon the trial, and were part of the proof upon which the defendant's conviction was had.

The use of these papers and the character of the statutes above set forth constitute the errors assigned in this Court.

In order to an intelligent understanding of the nature of the statute under which this conviction was had, and of the questions sought to be raised in this Court, some description of the game of policy and of the method in which it was conducted is essential.

It appears that a play at policy consists of an attempt to guess whether one or more of a series of numbers mentioned by the player will be included in a list of thirteen of the numerals from 1-78 which are drawn, or are supposed to be drawn, daily, at the "headquarters" of the policy ring (p. 55). These plays were made at various saloons and stores throughout the city, presided over by "writers" connected with the "ring" (p. 55). When a play was made it was the uniform custom of the policy writer to enter the play on a series of "manifold sheets" of a certain size (p. 55). The entry consisted of the numbers chosen by the player written in a row, *e. g.*, 4–11–44, and after the number a figure indicating the amount staked by the player (p. 55). Thus, assuming the play to be for five cents, the entry would be "4–11–44/5" (see Policy Manifold Sheets reproduced in the record following p. 106). At the time that these numbers were entered on the sheet they were recorded by the process of manifolding on a small card the size of a visiting card, which was given to the player (p. 55, 56).

The drawings took place morning and evening

(pp. 55, 56). In the morning drawing twelve numbers were drawn; in the afternoon, thirteen (p. 55). These drawings were sent out from "headquarters" to the various shops on slips (p. 20). If the series of numbers chosen by the player appeared in the drawing he won, and immediately received 100 times his stake from the writer. If it did not appear, he lost (pp. 20, 21, 55).

The scheme is thus essentially the same as that considered by this Court in

Lottery Case, 188 U. S., 321, see p. 377.

It is obvious that to carry on a system of this kind, where a large number of persons must necessarily keep a running account with the central headquarters, and where there were so many opportunities of collusion and trickery, on the part of the writers, there must be some system of duplicate or triplicate records of plays *as made*, one to be retained by the player, one to be retained by the "writer" and one to be sent to headquarters either before the drawing or at all events before the announcement. This was apparently the purpose of the manifold "books" upon which, as may be seen by the *fac simile* printed in the record, were entered in columns and without intervals the plays as made. It is obvious further that no great number of these manifold sheets would be expected to be found except in the hands of some one intimately connected with the proprietorship of the whole scheme.

On the 12th of December, 1901, certain police officials, armed with a search warrant, entered the defendant's office, and instituted a search for policy paraphernalia proscribed by the statute. The defendant, who was present, immediately asserted that the office was not his, and that they would attach anything therein contained at their peril (pp. 13, 57, 61). The office was then ransacked, and the defendant was placed under arrest (pp. 14, 29, 58).

The papers thus seized included about thirty-five hundred of the manifold sheets above described, separated into parcels, some of which were endorsed with dates suggesting the time of the drawing (pp. 56, 64) and Policy Manifolds as reproduced in the record following p. 106), and corresponding in their identifying marks with an account in defendant's handwriting (p. 72) found in a tin box in defendant's office (Exhibit 53), in such manner as to leave no room for doubt that the defendant was in some way connected with the persons interested in the financial results of the various shops.

There was also seized at that time a large number of private papers unrelated to the game of policy.

Upon the trial, the manifold sheets were admitted in evidence to establish the *corpus delicti*, and the private papers unrelated to the game itself were received to establish the defendant's proprietary interest in the proscribed articles, and his knowledge both of their character and that they were in his possession.

POINT I.

The admission in evidence of the defendant's private papers, does not present a Federal question, even though it be assumed that it involved an unreasonable search or seizure, or that it compelled the defendant to become a witness against himself in a criminal case.

The first error assigned is that the admission in

evidence of the private papers unrelated to the game of policy which were seized upon the raid, violated the defendant's constitutional right to be secure in his person, papers and effects against unreasonable searches and seizures; and infringed his constitutional privilege in compelling him to be a witness against himself, in a criminal case.

This right and privilege are asserted under the fourth, fifth and fourteenth amendments to the Federal Constitution. But clearly these provisions of our fundamental law have no application to the question. The Constitution contains no guarantee against a resort to unreasonable searches and seizures by the State Governments, or against compulsory self-incrimination in the State courts.

That the fourth and fifth amendments to the Federal Constitution do not *ex proprio vigore* operate as limitations upon the powers of the several States, and that nothing contained in those amendments would affect the validity of a State statute concededly compelling a person to be a witness against himself in a criminal case, or avowedly authorizing unreasonable searches and seizures, is, we take it, settled beyond question.

Thorington v. *Montgomery*, 147 U. S., 490, 492.

Brown v. *New Jersey*, 175 U. S., 172, p. 174.

Maxwell v. *Dow*, 176 U. S., 581.

And the theory that the fourteenth amendment changed radically the relation of the Federal Government to that of the States and to the people, and that it extended to the State Governments the restrictions imposed upon the power of the Federal Government by the first ten amendments, has long since been exploded in this Court.

Hurtado v. *California*, 110 U. S., 516.

In re Kemmler, 136 U. S., 436, 448.

Maxwell v. *Dow*, 176 U. S., 581.

In answer to the suggestion that it had such effect it has been pointed out by this Court that the privileges and immunities which that amendment guaranteed against invasion by the States are the privileges and immunities which are derived from Federal citizenship, as distinguished from those derived from citizenship in the State, and that even a right which from the viewpoint of the history of Anglo-Saxon institutions is so fundamental, as that of exemption from prosecution for an infamous crime save by indictment of a Grand Jury, or that of trial for such crime by a common law jury of twelve, was left at the discretion of the State Government.

> "It is claimed, however, that since the adoption of the Fourteenth Amendment the effect of the former amendments has been thereby changed and greatly enlarged. It is now urged in substance that all the provisions contained in the first ten amendments, so far as they secure and recognize the fundamental rights of the individual as against the exercise of Federal power, are by virtue of this amendment to be regarded as privileges or immunities of a citizen of the United States, and, therefore, the States cannot provide for any procedure in State Courts which could not be followed in a Federal Court because of the limitations contained in those amendments." * * *
>
> "It would be the vainest show of learning to attempt to prove by citations of authority, that up to the adoption of the recent amendments no claim or pretence was set up that those rights depended on the Federal Government for their existence or protection, beyond the very few express limitations which the Federal Constitution imposed upon the States—such, for instance, as the prohibition against *ex post facto* laws, bills of attainder and laws impairing the obligation of contracts. But with the exception of these and a few other restrictions the entire domain of the privileges and immunities of citizens of the States, as above defined,

lay within the constitutional and legislative power of the States, and without that of the Federal Government. Was it the purpose of the Fourteenth Amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights, which we have mentioned, from the States to the Federal Government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States?

"All this and more must follow, if the proposition of the plaintiff in error be sound."

* * *

"We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislatures of the States which ratified them."

Maxwell v. *Dow*, *176 U. S.*, *581*, *at 587*, *589*, *590*.

And manifestly, we submit, if the right of trial by jury is not guaranteed as one of the privileges or immunities of a citizen of the United States, or as an element of due process of law, there can be no basis for including within that guarantee either the exemption from unlawful search and seizure or from compulsory self-incrimination.

POINT II.

Even if it were assumed that the provisions of the Federal Constitution prohibited the State of New York to authorize an unreasonable search or seizure, or to compel a person to be a witness against himself in a criminal case, the reception in evidence of the papers seized upon the raid of December 12, 1901, would not constitute an invasion of the rights thus guaranteed.

That it was lawful to seize and introduce in evidence against the defendant the manifold sheets themselves, and that this neither constituted an unreasonable search nor compelled the defendant to be a witness against himself is, of course, beyond controversy.

Boyd v. *U. S.*, 116 U. S., 616, 623.
Lawton v. *Steele*, 152 U. S., 133, 140.

And the plaintiff in error himself tacitly concedes this to be so by limiting his complaint to the admission in evidence of his "private" papers seized at the same time (see Assignment of Errors p. 121).

As to these he asserts both that the seizure was unreasonable and that their admission in evidence compelled him to be a witness against himself.

The latter contention, we conceive, merits but slight consideration. Authority apart, the logic must be ingenious which, while conceding that it does not involve compulsory self-incrimination to seize and put in evidence that which is the gravamen of an offense, still seeks to establish that it

does involve such incrimination to seize and put in evidence that which merely tends to establish some link in the chain of evidence.

But upon authority it is clear that the constitutional provision in question had no such purpose.

A forcible illustration of the purposes and limitations of the constitutional provision is furnished in several decisions of the New York Court of Appeals.

It is well settled in that Court that the constitutional provision which exempts a person from the obligation of becoming a witness against himself in a criminal case is not to be extended so as to prevent the use of papers or documents forcibly taken from his possession which may tend to assist in his conviction of crime.

People v. *Gardner*, 144 N. Y., 119.
People v. *Van Wormer*, 175 N. Y., 188, 195.

In the Gardner case the Court, in discussing this constitutional provision, said :

> "The main purpose of the provision was to prohibit the compulsory oral examination of prisoners before trial, or upon trial, for the purpose of extorting unwilling confessions or declarations implicating them in crime. It could reach further only in exceptional and peculiar cases coming within the spirit and purpose of the inhibition. A murderer may be forcibly taken before his dying victim for identification, and the dying declaration of his victim may then be proved upon his trial for his identification. A thief may be forcibly examined and the stolen property may be taken from his person and brought into court for his condemnation. A prisoner's person may be examined for marks and bruises, and then they may be proved upon his trial to establish his guilt" (p. 128).

In the Van Wormer case, carrying the principle thus laid down to its legal conclusion, it was held that it was not violative of any constitutional right forcibly *to take from a prisoner the shoes he had worn upon the night of the commission of the offense and to compare them with the foot prints*, and thus through the use of these articles forcibly taken from the defendant to assist in bringing about his conviction.

It is submitted that that ruling, if sound, is conclusive of the question at issue in the case at bar; for in that case, as in this, articles which in themselves were not contraband were taken forcibly from the possession of the defendant and were used as a connecting link in the chain of evidence to bring about his conviction, and the ruling which sustains the admissibility of the evidence received in the Van Wormer case of necessity establishes the propriety of the evidence received in this case.

Had the papers admitted in evidence herein been taken from the *person* of the defendant instead of from his desk, and his trunk, and his tin boxes, there could be no question as to the rightfulness of the seizure or of the propriety of their introduction in evidence under the decision in the Van Wormer case. And it is submitted that it is impossible to base any logical distinction on the fact that the articles admitted in evidence were found not on his person but in his room.

The contention that *the introduction in evidence* of these papers constitutes an invasion of the constitutional provision against unreasonable search or seizure also involves a confusion of ideas.

It may be that the seizure of the private papers was unlawful and that the search therefor was unreasonable; but, even if this were conceded, its effect would be limited to the unlawfulness of *that* act. It would result from such concession, that the officers who made the seizure were subject to pros-

ecution, civil or criminal, and that any statute which purported to justify their act or limit their liability must be conceded to be unconstitutional. But it cannot result therefrom that the defendant shall be entitled to the exclusion of the evidence there obtained upon a proceeding brought to punish him for his crime.

It is well settled that the law does not concern itself with the method whereby a criminal is brought to the bar, or, with some slight exceptions, with the means whereby evidence against him has been obtained.

Greenleaf on Evidence, Vol. 1, Sec. 254a.
Gindrat *v.* People, 138 Ill., 103.
Commonwealth *v.* Tibbetts, 157 Mass., 519.
State *v.* Van Tassel, 103 Iowa, 6.
Chastang *v.* State, 83 Ala., 29.
Starchman *v.* State, 62 Ark., 538.
State *v.* Flynn, 36 N. H., 64.
Shields *v.* State, 104 Ala., 35.
State *v.* Atkinson, 40 S. C., 363.
Williams *v.* State, 100 Ga., 511.
State *v.* Kaub, 15 Mo. App., 433.
Ruloff *v.* People, 45 N. Y., 213.

The rule is laid down in Greenleaf as follows:

"SECTION 254a. It may be mentioned in "this place that though papers and other sub-"jects of evidence may have been illegally "taken from the possession of the party against "whom they are offered or otherwise unlaw-"fully obtained, this is no valid objection to "their admissibility if they are pertinent to "the issue. The Court will not take notice "how they were obtained, whether lawfully "or unlawfully, nor will it form an issue to de-"termine that question."

This rule will be found to be sustained by the authorities in a large number of States of the Union, and, as far as we can find, to have been contested nowhere. Thus

Gindrat vs. *The People of the State of Illinois*, 138 Ill., 103.

On the trial for the larceny of a diamond ring the proof showed that the defendants came into a jewelry store and examined some rings, but left without purchasing. Directly afterward a diamond ring was found missing from the tray, and a cheap imitation ring was found in its place. The supposed thieves were followed and arrested, and the stolen ring was found near where they were overtaken.

In their possession, in a valise at their room, were found *by a detective who had no warrant to make the search, other similar imitation diamond rings, which the Court admitted in evidence*, and it was held that they were properly admitted.

The Court said :

" It is perfectly manifest, then, that there " was no legal justification for the searching of " the rooms and the seizure of the jewelry. " The acts of De Sell (the detective) were in vio- " lation of the rights of plaintiffs-in-error, and " a trespass, for which they may hold him " legally accountable in a civil action, but what " bearing does that have on the case at bar? " Does the fact that De Sell gained knowledge " of the facts in respect to which he testifies, " by the commission of a trespass, prevent the " State from having the benefit of such facts? " (After examining some authorities, notably Commonwealth *vs.* Dana, 2 Metcalf, 329, the Court proceeded as follows, at page 111): " We think that the cases last cited as well as " the present case, are *clearly distinguishable* " *from Boyd* vs. *United States.* In the " latter case the unconstitutional and erroneous

"order, process and procedure of the trial "Court compelled the claimants to produce "evidence against themselves, and such order, "process and procedure were also held to be "tantamount to an unreasonable search and "seizure, while here and in the other cases "cited the question of illegality was raised "collaterally, and the Courts exercised no "compulsion whatever to procure evidence "from the defendants, and neither made "orders nor issued process authorizing or pur-"porting to authorize a search of premises or "a seizure of property or papers, but simply "admitted evidence which was offered, with-"out stopping to inquire whether possession "of it had been obtained lawfully or unlaw-"fully. Courts, in the administration of the "criminal law, are not accustomed to be over-"sensitive in regard to the sources from "which evidence comes, and will avail them-"selves of all evidence that is competent and "pertinent and not subversive of some consti-"tutional or legal right" (pp. 110 and 111). (italics ours).

Commonwealth vs. *Tibbetts*, 157 Mass., 519.

The defendant, a woman was indicted and tried for the crime of an attempt to procure an abortion, and upon the trial certain instruments, namely, a vaginal speculum, a glass syringe, a steel needle and a tin quart measure, were offered and received in evidence against her. These instruments, shown by competent testimony to be well adapted to the production of an abortion, were taken by one Tower, a police officer, from the defendant's house *at a time when he went there with a search warrant calling for a search for intoxicating liquors in the premises of the defendant's husband*, and on the same trial one Ashport, another police officer, produced *two letters*, which were also received in evidence, as tending to connect the defendant

with the commission of the crime charged, though this officer *also testified that he took the letters at a time when he was searching the premises of the defendant's husband for intoxicating liquors.* The Court said :

> " But two points have been argued. The " first is that the criminatory articles and let- " ters found by the officer in the defendant's " possession were not admissible in evidence " because the officer had no warrant to search " for them, and his only authority was under " a warrant to search her husband's premises " for intoxicating liquors. The defendant con- " tends that under such circumstances the " finding of criminatory articles or papers " can only be proved when by express pro- " vision of statute the possession of them is " itself made criminal. This ground of dis- " tinction is untenable. Evidence which is " pertinent to the issue is admissible, although " it may have been procured in an irregular or " even in an illegal manner. A trespasser " may testify to pertinent facts observed by " him, or may put in evidence pertinent arti- " cles or papers found by him while tresspass- " ing. For the trespass he may be held re- " sponsible civilly, and perhaps criminally, " but his testimony is not thereby rendered " incompetent."

So in

Commonwealth vs. *Brown*, 121 Mass., 69,

certain surgical instruments and a speculum chair, found in defendant's house, were exhibited to the jury and received in evidence against her on a trial for an attempt to procure an abortion.

In

State vs. *Van Tassel*, 103 Iowa, p. 6,

on the trial of the defendant for murdering his wife by poisoning her, letters signed by the

defendant taken from a bureau, not under lock and key, which the defendant had moved to the home of his wife's parents and directed his mother-in-law to give to his child, and a bond found in the house of his father-in-law, and not taken from a locked drawer, were admitted as a standard of comparison for the purpose of determining the genuineness of the defendant's signature to an alleged confession, *notwithstanding an objection that they were taken surreptitiously and that he was thus compelled to give evidence against himself.*

Chastang v. *The State*, 83 Ala., 29.

The defendant was indicted and tried for carrying concealed weapons. The charge was made in consequence of what occurred when two officers attempted to arrest him on *another* charge. When he was arrested, his pockets were searched and the pistol in question found and seized. It was held that this was properly received in evidence against him, though the weapon was taken by compulsion; and in *commenting on the Boyd case* the Court said, at page 30:

> "The order of the Court required the defendant to produce in evidence againt himself a strictly private paper or document, under the penalty, if he disobeyed the order, of having the imputed contents of the alleged document treated as confessed by him. This it was held was compelling the accused to furnish evidence against himself.
>
> "In the present case the defendant was required to produce nothing, to testify to nothing, and no presumption was indulged against him, as a penalty for his failure to comply with any order of Court. If our statute had provided that, under an indictment for carrying a weapon concealed about his person, the defendant might, under the order of the Court, be required to produce the alleged weapon and on failure to comply, the presumption would be

indulged that he had such weapon concealed about his person, then the defendant would be required to furnish evidence against himself. Then we would have a question in all respects like the one considered in Boyd *v.* United States (*supra*)."

In *Starchman* v. *State*, 62 Ark., 538, the defendant was on trial for burglarizing a safe which it was found had been drilled into and opened by means of an explosive. It was held to be competent for the State to introduce in evidence certain drills and punches capable of being used to open the safe, which were found by officers on defendant's premises while they were searching for the stolen property under a search warrant. *It is particularly noted that the search warrant called for stolen property, and that in the execution of it the punches and drills were found and seized and subsequently received in evidence against the defendant, though no claim was made that they formed any part of the stolen property.* The Court at page 540 said :

"In Boyd *v.* United States, 116 U. S., 616, cited by counsel for appellant, it was held that a defendant cannot be compelled to produce his private papers in order that they may be read in evidence against him upon a criminal prosecution, for the reason that to do so would in fact be compelling him to testify against himself. *But that case has no application here*, and rests on principles different from those controlling the admission of this evidence. No private papers of the defendant were introduced, and he was not compelled to produce the instruments offered in evidence in this case. *These instruments were found by the officers while searching for stolen property, and it was proper for such officers to testify concerning any material fact discovered by them while making such search.*" (Italics ours.)

So in the *State* v. *Flynn*, 36 New Hamp., 64, it was held that

> "Evidence obtained by means of a search warrant is not inadmissible, either upon the ground that it is in the nature of admissions made under duress or that it is evidence which the defendant has been compelled to furnish against himself, or on the ground that the evidence has been unfairly or illegally obtained, *even if it appears that the search warrant was illegally issued.*" (Italics ours.)

In *Shields* v. *The State*, 104 Ala., 35, it was held, on the trial for carrying concealed weapons, where it was shown that a pistol was found concealed on defendant's person as the result of a forcible search by an officer, that the evidence of the discovery of the pistol was admissible against the defendant, *although the search was unauthorized and unlawful.* At page 38 the Court said:

> "While it is true, the search of the defendant was without legal justification, a trespass, and an indictable misdemeanor, we know of no principle or theory upon which the State may be deprived of the right to employ the evidence of a criminal offense thus obtained."

In *State* v. *Atkinson*, 40 South Car., 363, it was held, on the trial of the defendant for murder, that *certain papers taken from his room in his absence and without his authority could be used in evidence against him*, the Court stating, at page 371:

> "The question now presented for our decision is *not* whether the persons who found the pieces of paper in the room of the defendant John Atkinson violated any of his legal rights by entering his room without authority, but whether the papers there found could be offered in evidence in this case. For, while it may be possible that it was a technical trespass to enter his room without authority, yet

it does not by any means follow that the pieces of paper there found could not be offered in evidence."

The Court then quotes Greenleaf on Evidence, Volume 1, Section 254a, above referred to as an authority on the proposition that evidence illegally taken from the possession of the party against whom it is offered or otherwise unlawfully obtained may be used in evidence against him, and that its unlawful seizure is no objection to its admissibility.

In the well considered case of *Williams* v. *The State*, 100 Ga., 511, where the defendant was on trial for keeping open a tippling house on Sunday, the evidence showed that two officers went to the premises *without a search warrant*, took a purse from the defendant's apron pocket, examined the premises and found there certain wines and whiskeys. On the trial the Court ruled that the property so found and taken was competent, notwithstanding the objection that was taken that the seizure was in violation of the defendant's rights under the Constitution. The Court held substantially that although the search and seizure may have been unlawful, unwarranted, unreasonable and reprehensible, this did not affect the admissibility of the evidence obtained as a result thereof.

So in *State* vs. *Kaub*, 15 Mo. Ap., 433, it was held that the unlawful seizure of certain papers and the introduction of the same in evidence did not actually or in effect compel the defendant to testify against himself.

The case of *State* vs. *Flynn*, 36 N. H., 64, 71, briefly and clearly summarizes the reasoning of other cases on this point as follows:

"It seems to us an unfounded idea that the "discoveries made by the officers and their

"assistants, in the execution of process, "whether legal or illegal, or where they in- "trude upon a man's privacy without any "legal warrant, are of the nature of admis- "sions made under duress, or that it is evi- "dence furnished by the party himself upon "compulsion. The information thus acquired "is not the admission of the party, nor evi- "dence given by him, in any sense.

"The party has in his power certain mute "witnesses, as they may be called, which he "endeavors to keep out of sight, so that they "may not disclose the facts which he is de- "sirous to conceal. By force or fraud access "is gained to them, and they are examined to "see what evidence they bear. That evidence "is theirs, not their owner's."

In the case of *Ruloff* vs. *The People*, 45 N. Y., 213, the defendant was indicted for murder in the first degree.

Upon the trial it was developed that the defendant, in company with two other men, attempted burglary in the City of Binghamton, New York; that the occupants of the building in which the burglary was attempted resisted the three men attempting such burglary, and while so doing one of said occupants was killed. The three alleged burglars escaped; two of them were drowned in a river while making their escape. The third, Ruloff, was apprehended a day or two later. Certain burglars' tools were found near the scene of the burglary, and certain articles were found upon the bodies of the two deceased burglars, which tended to connect them with the defendant, and hence connect the defendant with the commission of the crime. It then became necessary for the prosecution to show the connection of the defendant Ruloff with the two deceased burglars. *Detectives visited his rooms at No. 170 Bowery in New York City, and there found certain burglars' tools, together with certain papers and articles in a desk,*

tending to fasten upon the defendant the occupancy and control of the room, and, as a matter of inference, to connect him with the burglars' tools in the room, which resembled and in some way corresponded with the tools found at the scene of the burglary in Binghamton.

Various articles taken from the room were offered in evidence by the prosecution and admitted; to which the defendant objected and excepted. The Court of Appeals sustained the conviction.

The point herein referred to was not argued at length by defendant's counsel, but the point was properly before the Court and was disposed of adversely to the defendant (see pages 223 and 224 of the opinion).

Moreover, a certain slip of paper found upon the body of one of the deceased burglars was shown by the prosecution to bear handwriting of the defendant. To this the defendant objected and excepted. And on this point also the Court sustained the ruling of the lower Courts.

Contention of Plaintiff in error.

(1.) The learned counsel for the plaintiff in error has cited a number of authorities which he contends support a doctrine adverse to that which has been laid down by those heretofore referred to. Of these authorities, four only present the question of the effect of the admission of proof which has been illegally obtained; the rest tend more or less directly and emphatically to support the doctrine that the seizure of private papers, with or without a search warrant, is an illegal act—a proposition which is sustained by all the authorities cited on our brief.

The four cases in which is considered the effect of the admission of evidence illegally obtained are the Boyd case, 116 U. S., 616, which has been so clearly

distingnished by the learned Judges from whose opinions we have quoted at length, that no further comment seems necessary; the case of United States *v.* Wong Quong Wong, 94 Federal Reporter, 832, in which Judge Wheeler, as we conceive, misconstruing the Boyd case, laid down a rule which seems to support the contention of the defendant.

The Shannon case (73 Vt., 212), and the Sheridan case (96 N. W. Rep., 730).

The Shannon case does hold that where papers are taken forcibly from the person of the prisoner, it is reversible error to admit these papers in evidence, thereby overruling the practice which has obtained universally and from time immemorial.

See authorities, *supra.*

The Iowa case, State *v.* Sheridan, 96 N. W. Rep., 730, points a very interesting distinction between the case of a seizure under color of process wholly void and an illegal seizure made either without any process or while engaged in executing valid process; ruling that in the latter case the matter seized is admissible since taken without color of right, while in the former case the abuse of governmental process renders the matter seized inadmissible.

Whether or not this distinction is sound, is a question not presented to this Court.

In the case at bar the search-warrant could not be found at the time of the trial, and is not in evidence, nor was any competent secondary evidence of its terms offered. Concededly a valid search-warrant could have been issued limited to a search for the policy papers, and in the absence of proof to the contrary, the presumption clearly is that any warrant that was issued was a legal one.

Leland *v.* Cameron, 31 N. Y., 115.
Manderville *v.* Reynolds, 68 N. Y., 534.

Deeming *v.* Supreme Lodge, 131 N.Y., 522.
Blackman *v.* Reilly, 138 N.Y., 318, 328.
Pillow *v.* Roberts, 13 How. U.S.), 472, 474.

It follows, therefore, that the seizure of the private papers not relating to the game of policy was, in the view of the Iowa Court, a naked trespass, and, under the view adopted by that Court, there was no bar to the admissibility in evidence of the papers thus seized.

(2.) The learned counsel for the plaintiff in error seeks to distinguish this long line of authorities by contending that in each of the cases cited the evidence adduced as a result of the illegal seizure, was in some sense evidence of the *res gestae.*

It is difficult to see wherein this would furnish a ground of distinction, if, in fact, the statement was justified, but as a matter of fact, the evidence admitted in many of the cases cited, was not of the *res gestae.*

We forbear a lengthy analysis and discussion of all the cases cited and criticized, and confine ourselves to the Van Wormer case. There that which was seized and forcibly taken possession of, was the shoes of the defendants. The use that was made of that evidence was to furnish a connecting link as to the *identity* of the person that committed the crime. Here, in precisely the same way the defendant's "private" papers are used as a connecting link to establish his *identity* as the owner of the contraband papers. Clearly, we submit, there is no possible ground of distinction between the Van Wormer case and the case at bar.

(3.) A further contention made by the counsel for the plaintiff-in-error in criticism of the authorities, upon which the State Courts relied is that

they tend to substitute physical force for the orderly administration of justice.

The answer to this contention is that it is generally conceded that, while the Courts may reprehend the exercise of illegal physical force in the effort to bring a criminal to justice, still the fact that such force has been used in a preliminary proceeding, has never been held to prevent the law from taking its course, and has always been regarded as a collateral issue and not the subject of inquiry on his trial. Thus the fact that a person has been brought within the jurisdiction either from a foreign country or from a sister State by the unlawful use of force, which would render the officer who took him in custody amenable to a civil action anywhere and to a criminal prosecution in the county or State where the forcible abduction took place, will not prevent the trial of the person who was abducted in the State into which he had been brought, and will not avail him as a defense upon that trial.

Ker *v.* Illinois, 119 U. S., 436.
Mahon *v.* Justice, 127 U. S., 700.

Yet clearly in such case the defendant has been deprived of his liberty without due process of law in a preliminary proceeding quite as clearly as it can be claimed that he has been subjected to an unreasonable seizure in the case at bar.

An yet this Court said :

> "The jurisdiction of the Court in which the "indictment is found is not impaired by the "manner in which the accused is brought be-"fore it."

Mahon *vs.* Justice, 127 U. S., 700, at p. 708,

Similarly, we submit in accordance with all authorities the right of the Court to consider evidence is not in any way affected by the illegal character

of the methods by which that evidence has been secured.

The contrary doctrine is based upon the assumption that the aim of the Fathers who provided our constitutional safeguards was to protect the criminal from the consequence of his crime, and that, therefore, it is violative of the constitutional right of the criminal to utilize for the purpose of his conviction any evidence that has been obtained against him illegally.

Manifestly such an assumption is without basis, and manifestly the rights recognized by the founders of our government are fully protected by a system of laws which accords a civil remedy even against the officers of the government for their invasion.

Clearly, too, if, by reason of his criminal conduct, a person is so circumstanced that the invasion of his rights leads to the discovery of evidence entailing criminal consequences for which there can be no redress in a civil action, "that", to quote the language of an eminent New York jurist used in a somewhat different connection, "is the mis-"fortune of his situation, and not any want of hu-"manity in the law."

POINT III.

Section 344a of the Penal Code is not in conflict with any of the provisions of the 14th Amendment to the Federal Constitution.

The act in question is part of a general scheme of legislation designed to discourage gambling within the State of New York.

Sec. 9 of Article 1 of the Constitution of the State forbids all forms of gambling and enjoins

upon the State Legislature the duty of carrying this inhibition into effect.

In furtherance of this constitutional requirement the Legislature has sought to discourage the particular form of gambling known as "policy", not only by prohibiting and making criminal the act of gambling itself, but by making it criminal knowingly to have possession of the instrumentalities wherewith it is conducted, or even the evidence of the completed gambling transaction.

Wherein it may be claimed that such an enactment exceeds the powers of the State Government it is difficult to perceive.

That the object of the statute is a public one such as to justify the exercise of the police powers in their broadest interpretation, is, of course, beyond question.

> "Experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries; the former are confined to a few persons and places, but the latter infests the whole community; it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor, it plunders the ignorant and simple. In other cases we have adjudged that authority given by legislative enactment to carry on a lottery, although based upon a consideration in money, was not protected by the contract clause of the Constitution; this, for the reason that no State may bargain away its power to protect the public morals, nor excuse its failure to perform a public duty by saying that it had agreed, by legislative enactment, not to do so. *Stone* v. *Mississippi*, 101 U. S., 814; *Douglas* v. *Kentucky*, 168 U. S., 488.
>
> *Lottery Case*, 188 U. S., 321, at p. 356.

That the means adopted to further that object are well within the limits of the police power is equally well settled.

The power of the State in furtherance of a public

purpose to declare criminal even that which in itself is innocent, and to prohibit the possession of even a useful article is settled beyond question. Thus it is established beyond controversy that the mere possession of fish or game or of the instrumentalities for their destruction may be proscribed and affected with criminal consequences.

Phelps v. *Racy*, 60 N. Y., 10.
People v. *Buffalo Fish Co.*, 164 N. Y., 93.
Lawton v. *Steele*, 152 U. S., 133, at p. 143.
Geer v. *Connecticut*, 161 U. S., 519.

A fortiori as to the power of the State to prohibit the possession of instrumentalities of gambling, or other noxious pursuits. Such a prohibition does not invade any right of property, since there can be no property in that which endangers the public morals.

Stone v. *Mississippi*, 101 U. S., 814.
Douglas v. *Kentucky*, 168 U. S., 488.

It does not invade any right of liberty, since that right, though embracing the privilege of pursuing any useful or harmless calling, does not embrace the privilege of dealing in that which will be confessedly injurious to public morals.

Lottery Case, 188 U. S., 321, at p. 357.

And so this Court has sustained as an exercise of the police power incidental to the Inter-State Commerce powers of the Federal Government, the Act of 1895, making it criminal to transport a lottery policy or even the advertisement of a lottery policyfrom one State to another.

Lottery Case, 188 U. S., 321.

Clearly, if the question were ever open to any doubt, said doubt has been set at rest by this decision.

POINT IV.

The question of the constitutionality of Section 344b was not raised in the State Courts in such manner as to permit a review in this Court.

The claim that the constitutionality of Section 344b is involved in the case, and that it is before this Court, is founded upon the fact that instructions upon the presumption of *scienter* flowing from possession, were given to the jury by the trial Court, without objection on the part of counsel for the defendant (plaintiff in error).

In the absence of such an objection and exception the Court of Appeals was without jurisdiction to review the propriety of the instructions, for even if the statute were unconstitutional, the case before them stood precisely as though, in the absence of any statute, a Judge presiding at a trial had instructed the jury erroneously and the counsel for the prisoner had failed to except.

People vs. *Grossman*, 168 N. Y., 47.
People vs. *Sherlock*, 166 N. Y., 180.
People vs. *Brooks*, 131 N. Y., 321.
People vs. *Most*, 128 N. Y., 113.
People vs. *Donovan*, 101 N. Y., 63.
People vs. *Guidici*, 100 N. Y., 503.

And the Court has so held in its opinion herein.

> "The learned trial Judge in charging the jury called their attention to the statute and explained its application and limitations. To this charge no exception was taken and the question of the constitutionality of this section therefore is not presented." .(p. 117).

It is true that the Court then proceeded to discuss the question of constitutionality and to express an opinion upon that question, which will doubtless hereafter be controlling upon the lower

courts, and will result in an affirmance of a judgment, even though the question be raised.

But since under the statutes of the State of New York the Court of Appeals was without *power* to reverse in this case, even though it deemed the statute unconstitutional because of the failure of the plaintiff in error to take the proper means of raising the question, we submit that the question is not before this Court.

Spies vs. *Illinois*, 123 U. S., 131, 181.
Chappell v. *Bradshaw*, 128 U. S., 132, 133.
Morrison v. *Watson*, 154 U. S., 111, 115.
Miller v. *Cornwall Rd. Co.*, 168 U. S., 131.

"To give this Court jurisdiction to review "the judgment of the State Court under Sec. "709 of the Revised Statutes because of the "denial by a State Court of any title, right, "privilege or immunity claimed under the "Constitution or any treaty or statute of "the United States, it must appear on the "record that such title, right, privilege or im- "munity was 'specially set up or claimed' "at the proper time in the proper way. "'To be reviewable here,' says Waite, "C. J., in *Spies* v. *Illinois*, 123 U. S,. "131, 181, 'the decision must be against the "right *so set up or claimed*. As the Supreme "Court of the State was reviewing the decision "of the trial Court it must appear that the "claim was made in that Court because the "Supreme Court was only authorized to review "the judgment for errors commited there, and "we can do no more.'"

Chappell v. *Bradshaw*, 128 U. S., 132, 133.

POINT IV.

Section 344-b of the Penal Code is constitutional.

As to the constitutionality of Section 344-b, two points are made: First, that it was beyond the power of the Legislature to make the possession *prima facie* evidence that the possession was conscious; second, that the exception of public officers from the operation of the section renders it class legislation.

A.

The provision making proof of possession prima facie proof that the possession was conscious is constitutional.

We conceive it to have been conceded whenever the question has been raised (1) that the Legislature may, with some limitations, enact that when certain facts have been proved, they shall be *prima facie* evidence of the existence of the main fact in question.

(2) That the limitations are that the fact upon which the presumption is to rest must have some fair relation to or natural connection with the main fact. The inference of the existence of the main fact, because of the existence of the fact actually proved, must not be merely and purely arbitrary or wholly unreasonable, unnatural or extraordinary.

(3.) And that the connection between the fact proven and the fact in issue need not be that of inevitable inference, nor need the fact inferred be one which is within the exclusive knowledge of the person against whom the inference is drawn.

Peo. *vs.* Cannon, 139 N. Y., 32.

These principles have been universally accepted.

Cooley's Const. Lim., pp. 367–369.
State *v.* Cunningham, 25 Conn., 195.
Wooten *v.* Florida, 1 L. R. A., 819 (Fla., 1, 888).
Com. *v.* Williams, 6 Gray (72 Mass.), 1.
State *v.* Hurley, 54 Me., 562.
State *v.* Higgins, 13 R. I., 330.
State *v.* Mellor, 13 R. I., 666, 669.
Com. *v.* Kelly, 10 Cush. (64 Mass.), 69.
Com. *v.* Tuttle, 12 Cush., 502.
Meadowcroft *v.* People, 163 Ill., 56.
State *v.* Buck, 120 Mo., 479.
State *v.* Beach, 36 L. R. A., 179 (Ind., 1897).
Morgan *v.* State, 117 Ind., 569.

The Federal Criminal Code includes numerous *prima facie* evidence provisions similar to the one here under discussion.

In Section 5495 it is provided that the failure of any person charged with the safekeeping or disbursement of public moneys to pay a draft, order, or a warrant drawn upon him by the proper accounting officer of the treasury for any public money in his hands, shall be deemed upon the trial of any indictment against such person for embezzlement as *prima facie* evidence of such embezzlement.

And the constitutionality of this provision has never, so far as we can find, been questioned.

In Section 3082 of the U. S. Revised Statutes it is provided that whenever on the trial of an indictment for fraudulently importing goods, etc., the defendant is shown to be or to have been in possession of the smuggled goods "such possession shall be deemed evidence sufficient to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury".

The constitutionality of this provision never seems to have been questioned nor has it ever been

considered that such provisions impair the right of trial by jury (Tilley *vs.* Savannah Ry. Co., 5 Fed. Rep., 641, 659).

Moreover, it has been laid down broadly by this Court that it is within the acknowledged power of every Legislature to prescribe the evidence which shall be received, and the effect of that evidence in the Courts of its own government.

Fong Yue Ting *v.* U. S., 149 U. S., 698, 729.

Marks *v.* Hanthorn, 148 U. S., 172, 182.

Pillow *v.* Roberts, 13 How. (54 U. S.), 472, 476.

Ogden *v.* Saunders, 12 Wheat. (25 U. S.), 212, 348.

For the purpose of the case at bar, it is not necessary, however, to argue in favor of an unlimited power to prescribe rules of evidence. Conceding that power to be subject to the limitations set forth in the opinion of Judge Peckham in the case of the People *v.* Cannon (*supra*), we submit that it is difficult to conceive of an inference more natural and more in accord with common experience than that a person knows what articles are in his possession, and, therefore, that it is difficult to conceive of an inference which comes more completely within the definition and limitations of the power as laid down by the Courts.

B.

Section 344b is not Class Legislation.

The point is made by the counsel for the plaintiff in error that Section 344b is void because it applies a different rule to public officers than that which is applied to other persons; that this is class legislation, and that there can be no justification

for exempting a notary public from the same rules of evidence that are applicable to other persons.

People *v.* Cannon, 139 N. Y., 32.
People *v.* Stedeker, 175 N. Y., 57.

A literal construction of the statute might, perhaps, have furnished some ground for this contention. But the statute has been construed by the highest Court of the State to exempt public officers only when their possession is by virtue of their office and in the performance of official duties.

See Opinion, p. 118 of this record.

So construed, it is simply a recognition of the rule of law which would, in any event, exempt an officer from liability for the possession of the article, because his possession would be without the element of criminal intent.

People *v.* Noelke, 29 Hun, 461, 466.
People *v.* Noelke, 94 N. Y., 137 (s. c. affirmed).

IN CONCLUSION

It is respectfully submitted that the judgment of the New York Courts should be affirmed.

WILLIAM TRAVERS JEROME.
HOWARD S. GANS,
Counsel for Defendant in Error.

Supreme Court of the United States.

No. 504.—October Term, 1903.

Albert J. Adams, Plaintiff in Error, vs. The People of the State of New York. } In error to the Supreme Court of the State of New York.

[February 23, 1904.]

Mr. Justice Day delivered the opinion of the Court.

This is a writ of error to the Supreme Court of the State of New York. The plaintiff in error at the April term, 1903, of the Supreme Court of the State of New York was tried before one of the justices of that court and a jury and convicted of the crime of having in his possession, knowingly, certain gambling paraphernalia used in the game commonly known as policy, in violation of section 344*a* of the Penal Code of the State of New York. This section and the one following, section 344*b*, relating to the offense in question, are as follows:

"Sec. 344*a*. Keeping Place to Play Policy.—A person who keeps, occupies or uses, or permits to be kept, occupied or used, a place, building, room, table, establishment or apparatus for policy playing, or for the sale of what are commonly called 'lottery policies,' or who delivers or receives money or other valuable consideration in playing policy, or in aiding in the playing thereof, or for what is commonly called a 'lottery policy,' or for any writing, paper or document in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery; or who shall have in his possession, knowingly, any writing, paper or document, representing or being a record of any chance, share or interest in numbers sold, drawn or to be drawn, or in what is commonly called 'policy,' or in the nature of a bet, wager or insurance, upon the drawing or drawn numbers of any public or private lottery, or any paper, print, writing, numbers, device, policy slip or article of any kind such as is commonly used in carrying on, promoting or playing the game commonly called 'pollicy;' or who is the owner, agent, superintendent, janitor or caretaker of any place, building or room where policy playing or the sale of what are commonly called 'lottery policies' is carried on with his knowledge or after notification that the premises are so used, permits such use to be continued, or who aids, assists or abets in any manner, in any of the offenses, acts or matters herein named, is a common gambler and punishable by imprisonment for not more than two years, and in the discretion of the court, by a fine not exceeding one thousand dollars, or both.

"Sec. 344*b*. Possession of Policy Slip, etc., Presumptive Evidence.—The possession, by any person other than a public officer, of any writing,

paper or document representing or being a record of any chance, share or interest in numbers sold, drawn or to be drawn, or in what is commonly called 'policy,' or in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery, or any paper, print, writing, numbers or device, policy slip or article of any kind, such as is commonly used in carrying on, promoting or playing the game commonly called 'policy,' is presumptive evidence of possession thereof knowingly and in violation of the provisions of section three hundred and forty-four *a*."

The assignments of error in this court are:

"*First*. That the court erred in holding that by the reception in evidence of the defendant's private papers seized in the raid of his premises, against his protest and without his consent, which had no relation whatsoever to the game of policy, for the possession of papers used in connection with which said game he was convicted, his constitutional right to be secure in his person, papers and effects against unreasonable searches and seizures was not violated, and that he was also thereby not compelled to be a witness against himself in contravention of the Fourth, Fifth and Fourteenth Articles of Amendment to the Constitution of the United States.

"*Second*. That the court erred in holding that the statute, sections 344*a*, 344*b*, of the Penal Code of the State of New York, under which the indictment against the plaintiff in error was found, and his conviction was had, did not deprive him of rights, privileges and immunities secured to other citizens of the United States and of said State of New York, nor of liberty or property, without due process of law, nor of the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

"*Third*. That the court erred in affirming the judgment of conviction, and in refusing to discharge the plaintiff in error from custody."

The game of policy referred to in the sections of the statute quoted is a lottery scheme carried on, as shown in the testimony, by means of certain numbers procured at the shop or place where the game is played, and consists in an attempt to guess whether one or more of the series held by the player will be included in a list of twelve or at times thirteen of the numbers between one and seventy-eight, which are supposed to be drawn daily at the headquarters of the operators of the game. A person desiring to play the game causes the numbers to be entered on series of slips or manifold sheets. One of these pieces of paper containing the combination played by the person entering the game is kept by him and is known as a policy slip. Drawings are held twice a day, and the holder of the successful combination receives the money which goes to the winner of the game. About 3,500 of these slips were found in the office occupied by the plaintiff in error, which was searched by certain police officers holding a search warrant. The officers took not only the policy slips, but certain other papers, which were received in evidence against the plaintiff in error at the trial, against his objection, for the purpose of identifying certain hand-

writing of the defendant upon the slips, and also to show that the papers belonged to the defendant and were in the same custody as the policy slips.

So far as the case presents a Federal question, the Court of Appeals of the State of New York held (68 N. E. R. 636) that the Fourth and Fifth Amendments to the Constitution of the United States do not contain limitations upon the power of the States, and proceeded to examine the case in the light of similar provisions in the Constitution and bill of rights of that State.

We do not feel called upon to discuss the contention that the Fourteenth Amendment has made the provisions of the Fourth and Fifth Amendments to the Constitution of the United States, so far as they relate to the right of the people to be secure against unreasonable searches and seizures and protect them against being compelled to testify in a criminal case against themselves, privileges and immunities of citizens of the United States of which they may not be deprived by the action of the States. An examination of this record convinces us that there has been no violation of these constitutional restrictions, either in an unreasonable search or seizure, or in compelling the plaintiff in error to testify against himself.

No objection was taken at the trial to the introduction of the testimony of the officers holding the search warrant as to the seizure of the policy slips; the objection raised was to receiving in evidence certain private papers. These papers became important as tending to show the custody by the plaintiff in error, with knowledge, of the policy slips. The question was not made in the attempt to resist an unlawful seizure of the private papers of the plaintiff in error, but arose upon objection to the introduction of testimony clearly competent as tending to establish the guilt of the accused of the offense charged. In such cases the weight of authority as well as reason limits the inquiry to the competency of the proffered testimony, and the courts do not stop to inquire as to the means by which the evidence was obtained. The rule is thus laid down in Greenleaf (vol 1, sec. 254*a*):

"It may be mentioned in this place that though papers and other subjects of evidence may have been illegally taken from the possession of the party against whom they are offered or otherwise unlawfully obtained, this is no valid objection to their admissibility if they are pertinent to the issue. The court will not take notice how they were obtained, whether lawfully or unlawfully, nor will it form an issue to determine that question."

The author is supported by numerous cases. Of them, perhaps the leading one, is *Commonwealth* v. *Dana*, (2 Met. Mass. 329,) in which the opinion was given by Mr. Justice Wilde, in the course of which he said:

"There is another conclusive answer to all these objections. Admitting that the lottery tickets were illegally seized, still this is no legal objection to the admission of them in evidence. If the search warrant were illegal, or if the officer serving the warrant exceeded his authority, the party on whose complaint the warrant issued would be responsible for the wrong

done; but this is no good reason for excluding the papers seized as evidence if they were pertinent to the issue, as they unquestionably were. When papers are offered in evidence the court can take no notice how they were obtained, whether lawfully or unlawfully. Nor would they form a collateral issue to determine that question. This point was decided in the cases of *Leggett* v. *Tallervey*, (14 East, 302,) and *Jordan* v. *Lewis*, (14 East, 306 note,) and we are entirely satisfied that the principle on which these cases were decided was sound and well established."

This principle has been repeatedly affirmed in subsequent cases by the Supreme Judicial Court of Massachusetts, among others *Commonwealth* v. *Tibbetts*, (157 Mass. 519.) In that case a police officer, armed with a search warrant calling for a search for intoxicating liquors upon the premises of the defendant's husband, took two letters which he found at the time. Of the competency of this testimony the court said:

"But two points have been argued. The first is that the criminatory articles and letters found by the officer in the defendant's possession were not admissible in evidence because the officer had no warrant to search for them, and his only authority was under a warrant to search her husband's premises for intoxicating liquors. The defendant contends that under such circumstances the finding of criminatory articles or papers can only be proved when by express provision of statute the possession of them is itself made criminal. This ground of distinction is untenable. Evidence which is pertinent to the issue is admissible, although it may have been procured in an irregular or even in an illegal manner. A trespasser may testify to pertinent facts observed by him, or may put in evidence pertinent articles or papers found by him while trespassing. For the trespass he may be held responsible civilly, and perhaps criminally, but his testimony is not thereby rendered incompetent." (*Com.* v. *Acton*, 165 Mass. 11; *Com.* v. *Smith*, 166 Mass. 370.)

To the same effect are *Chastang* v. *State*, (83 Ala. 29;) *State* v. *Flynn*, (36 N. H. 64.) In the latter case it was held:

"Evidence obtained by means of a search warrant is not inadmissible, either upon the ground that it is in the nature of admissions made under duress or that it is evidence which the defendant has been compelled to furnish against himself, or on the ground that the evidence has been unfairly or illegally obtained, even if it appears that the search warrant was illegally issued."

State v. *Edwards*, (51 W. Va. 220;) *Shields* v. *State*, (104 Ala. 35;) *Bacon* v. *United States*, (97 Fed. Rep. 35;) *State* v. *Atkinson*, (40 S. C. 363;) *Williams* v. *State*, (100 Ga. 511;) *State* v. *Pomeroy*, (130 Mo. 489;) *Gindrat* v. *The People*, (138 Ill. 103;) *Trask* v. *The People*, (151 Ill. 523;) *Starchman* v. *State*, (62 Ark. 538.)

In this court it has been held that if a person is brought within the jurisdiction of one State from another, or from a foreign country, by the unlawful use of force, which would render the officer liable to a civil action or in a criminal proceeding because of the forcible abduction, such fact would

not prevent the trial of the person thus abducted in the State wherein he had committed an offense. (*Kerr* v. *Illinois*, 119 U. S. 436; *Mahon* v. *Justice*, 127 U. S. 700.) The case most relied upon in argument by plaintiff in error is the leading one of *Boyd* v. *United States*, (116 U. S. 616.) In that case a section of the customs and revenue laws of the United States authorized the court in revenue cases, on motion of the government's attorney, to require the production by the defendant of certain books, records and papers in court, otherwise the allegation of the government's attorney as to their contents to be taken as true. It was held that the act was unconstitutional and void as applied to a suit for a penalty or a forfeiture of the party's goods. The case has been frequently cited by this court and we have no wish to detract from its authority. That case presents the question whether one can be compelled to produce his books and papers in a suit which seeks the forfeiture of his estate on pain of having the statements of government's counsel as to the contents thereof taken as true and used as testimony for the government. The court held in an opinion by Mr. Justice Bradley that such procedure was in violation of both the Fourth and Fifth Amendments; the Chief Justice and Justice Miller held that the compulsory production of such documents did not come within the terms of the Fourth Amendment as an unreasonable search or seizure, but concurred with the majority in holding that the law was in violation of the Fifth Amendment. This case has been cited and distinguished in many of the cases from the State courts which we have had occasion to examine.

The Supreme Court of the State of New York, before which the defendant was tried, was not called upon to issue process or make any order calling for the production of the private papers of the accused, nor was there any question presented as to the liability of the officer for the wrongful seizure, or of the plaintiff in error's right to resist with force the unlawful conduct of the officer, but the question solely was, were the papers found in the execution of the search warrant, which had a legal purpose in the attempt to find gambling paraphernalia, competent evidence against the accused? We think there was no violation of the constitutional guaranty of privilege from unlawful search or seizure in the admission of this testimony. Nor do we think the accused was compelled to incriminate himself. He did not take the witness stand in his own behalf, as was his privilege under the laws of the State of New York. He was not compelled to testify concerning the papers or make any admission about them.

The origin of these amendments is elaborately considered in Mr. Justice Bradley's opinion in the Boyd case, *supra*. The security intended to be guaranteed by the Fourth Amendment against wrongful search and seizures is designed to prevent violations of private security in person and property

and unlawful invasion of the sanctity of the home of the citizen by officers of the law, acting under legislative or judicial sanction, and to give remedy against such usurpations when attempted. But the English and nearly all of the American cases have declined to extend this doctrine to the extent of excluding testimony which has been obtained by such means, if it is otherwise competent. In Boyd's case the law held unconstitutional, virtually compelled the defendant to furnish testimony against himself in a suit to forfeit his estate, and ran counter to both the Fourth and Fifth Amendments. The right to issue a search warrant to discover stolen property or the means of committing crimes, is too long established to require discussion. The right of seizure of lottery tickets and gambling devices, such as policy slips, under such warrants, requires no argument to sustain it at this day. But the contention is that, if in the search for the instruments of crime, other papers are taken, the same may not be given in evidence. As an illustration, if a search warrant is issued for stolen property and burglars' tools be discovered and seized, they are to be excluded from testimony by force of these amendments. We think they were never intended to have that effect, but are rather designed to protect against compulsory testimony from a defendant against himself in a criminal trial, and to punish wrongful invasion of the home of the citizen or the unwarranted seizure of his papers and property, and to render invalid legislation or judicial procedure having such effect.

It is further urged that the law of the State of New York (§ 344*c*) which makes the possession by persons other than a public officer of papers or documents, being the record of chances or slips in what is commonly known as policy, or policy slips, or the possession of any paper, print or writing commonly used in playing or promoting the game of policy, presumption of possession thereof knowingly in violation of section 344*a*, is a violation of the Fourteenth Amendment to the Constitution of the United States in that it deprives a citizen of his liberty and property without due process of law. We fail to perceive any force in this argument. The policy slips are property of an unusual character and not likely, particularly in large quantities, to be found in the possession of innocent parties. Like other gambling paraphernalia, their possession indicates their use or intended use, and may well raise some inference against their possessor in the absence of explanation. Such is the effect of this statute. Innocent persons would have no trouble in explaining the possession of these tickets, and in any event the possession is only *prima facie* evidence, and the party is permitted to produce such testimony as will show the truth concerning the possession of the slips. Furthermore, it is within the established power of the State to prescribe the evidence which is to be received in the courts of its own government. (*Fong Yue Ting* v. *United States*, 149 U. S. 698–729.)

It is argued, lastly, that section 344*b* is unconstitutional because the possession of the policy tickets is presumptive evidence against all except public officers, and it is urged that public officials, from the governor to notaries public, would thus be excluded from the terms of the law which apply to all non-official persons. This provision was evidently put into the statute for the purpose of excluding the presumption raised by possession where such tickets or slips are seized and are in the custody of officers of the law. This was the construction given to the act by the New York courts, and is the only one consistent with its purposes. The construction suggested would lead to a manifest absurdity, which has not received, and is not likely to receive, judicial sanction. We find nothing in the record before us to warrant a reversal of the conclusions reached in the New York Court of Appeals, and its

Judgment will be affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.